

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MENTOR GRAPHICS)
CORPORATION, an Oregon)
corporation, and MGZ Corp.,)
a Delaware corporation,)
)
Plaintiffs,) C.A. No. 16584-NC
)
v.)
)
QUICKTURN DESIGN SYSTEMS,)
INC., a Delaware corporation, et. al.,)
)
Defendants.)

MENTOR GRAPHICS)
CORPORATION, an Oregon)
corporation, and MGZ Corp.,)
a Delaware corporation,)
)
Plaintiffs,) C.A. No. 16843-NC
)
v.)
)
KEITH R. LOBO, et. al.,)
)
Defendants.)

OPINION

Date Submitted: February 2, 2001
Date Decided: August 14, 2001
Date Revised: August 16, 2001

connection is presumed to exist, and the defendants have shown nothing to rebut that presumption.

The defendants do not dispute Mentor's argument that its two lawsuits satisfy the aforementioned three criteria. Rather, their response is that in all events, Mentor's fee application must fail on two separate and independent grounds. The first is that whatever entitlement a differently situated Quicktum shareholder might otherwise have to seek an attorneys' fee, Mentor has no such entitlement because Mentor was a losing hostile bidder for corporate control. As such, Mentor lacks standing under Delaware law to seek attorneys' fees from the corporation's shareholders. Defendants point to *In re Dunkin ' Donuts Shareholders Litigation* ("*Dunkin ' Donuts*")¹⁵ as on-point Delaware authority for the principle that as a matter of policy, no exception to the American Rule (under which each litigant is responsible for its own counsel fees)¹⁶ will be made for bidders for corporate control. The reasons are that the interests of such bidders are not aligned with the best interests of the public stockholders, and bidders need no financial incentive to bring litigation in support of their bid.

¹⁵ Del. Ch. *Consol.* C.A. Nos. 10825 & 10907, Chandler, V.C. (Nov. 27, 1990).

¹⁶ *CM&M Group, Inc. v. Carroll*, Del. Supr., 453 A.2d 788, 795 (1982).

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The Court concluded that “no good reason exists , . . for shifting to the winning bidder the litigation (investment) costs of the losing bidder,” a conclusion even “more obvious” where the unsuccessful bidder has “hedged” against failure by acquiring a large, cheap block of the **target company’s** stock that it tendered to the winning bidder at a substantial profit:

Having effectively hedged its investment risks, it is not at all clear to my why this Court should increase the rate of return on Kingsbridge’s investment by shifting part of its costs to its competitor. All of these considerations are underscored by the actual fee arrangement in this case. Kingsbridge’s attorneys were not employed on a contingency basis; they were employed on an hourly basis and have already been paid for their services.²⁷

2. Mentor’s Attempt to Distinguish Dunkin’ Donuts

Insofar as their pivotal facts are concerned, *Dunkin’ Donuts* and this case are indistinguishable. Mentor, like Kingsbridge, made a hostile tender offer, commenced litigation in aid of that offer that, together with shareholder class actions, sought also to dismantle certain target company defenses. Mentor, like Kingsbridge, bought a significant block of the target company’s stock on which it made a profit. Mentor, like Kingsbridge, was unsuccessful in acquiring the target company, and sought to shift its costs to

²⁷ *Id.* at 24.

Bidders, unlike [the class of diffused shareholders] are not organizationally disadvantaged. Indeed the typical bidder is a well organized and well financed individual or small group of individual stockholders. They usually have vast resources that may be tapped to fund lawsuits necessary to advance their investment strategy. . . . Bidders have the incentive of their investment objective-acquiring an underpriced target company and reaping the resulting profit. Of course, this investment objective, like most investments, has risks. A bidder hires experts to identify (and to investigate) underpriced corporations. It may also initiate lawsuits in order to counter defensive strategies by the target's management. These information and litigation costs represent a part of the bidder's entire purchase price Investment costs such as information and litigation costs seem to represent a relatively small piece of the financial picture in most transactions.²⁵

The Court also rejected Kingsbridge's argument that the successful bidder should be the party obligated to pay Kingsbridge's fees, because "[s]hifting legal fees to the successful competing bidder appears inconsistent with the principle underlying the common fund and corporate benefit doctrines that the benefited class should foot the bill of whoever causes the benefit to be conferred. In what sense can it be said that Allied Lyons [the successful bidder] is the benefited class (or even part of the benefited class)?"²⁶

²⁵ *Id* at 22.

²⁶ *Id.* at 23.