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Re: *Nelson v. Frank E. Best, Inc.*
Civil Action No. 16329

Dear Counsel:

This is my decision on respondents' motion to sever the appraisal claims in *Nelson v. Frank E. Best, Inc.*, C.A. No. 16329. Respondents' motion to sever, if granted, would sever petitioners' claims for appraisal against Frank E. Best, Inc. ("FEB"), Best Universal Lock Co. ("BUL"), and Best Lock Corporation ("BLC") into three separate actions. Since this Court has decided several matters with regard to this action as well as the fiduciary duty action, which share the same set of operative facts, I will not outline those facts again here. Rather, I will respond directly to each of respondents' three main arguments in support of their motion to sever.

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First, respondents argue that **this** Court must sever the claims because petitioners, former shareholders of FEB, BUL, and BLC, are engaged in litigation in which there are “clear, direct and serious conflicts of interest between the former shareholders [of these corporations].” They specifically argue that “one clear conflict between the three shareholder groups arises from the fact that each of the shareholder groups has an important financial interest in whether the Court determines that a control premium is appropriate, and if so, how that amount is established and at which corporate level it should be placed.”² They also note that petitioners’ attorneys did not adequately inform their clients of this conflict or secure their waiver of it and, thus, have not complied with Rule I.7 of the Delaware Lawyer’s **Rules** of Professional Conduct, which requires attorney disclosure and client waiver of potential conflicts of interest. Respondents may indeed be correct that petitioners’ attorneys have failed to disclose adequately to their clients the **potential** conflicts of interest that may arise, for example, if the Court employs a control premium as part of the valuation of one of the three companies. Such a failure, while it may be the basis for disciplinary action or a later malpractice claim against petitioners’ attorneys, does not prevent this Court from appraising FEB, BUL, and BLC in a single civil action.

¹ Defs.’ Opening Br. in Support of its Motion to Sever Appraisal Claims, at 3.

² Defs.’ Reply Br. in Support of its Motion to Sever Appraisal Claims, at 1.

Second, respondents argue that neither § 262 of the DGCL nor Court of Chancery Rules 20(n) and 21 permit this Court to combine the appraisals of three “separate” Delaware corporations into a single civil action. I cannot agree with **this** argument. While § 262 does not contemplate combining the appraisal of more than one company into a single civil action, it does not, by its terms, prevent it. Similarly, nothing in the plain language of Rules 20(a) or 21 suggests that this Court **cannot** appraise three companies in a single civil action. Moreover, this Court, *In Cavalier Oil Corp. v. Hartnett*,³ conducted a single trial of “four statutory appraisal **actions** involving two separate but related Delaware corporations.”⁴ Thus, it is clear to me that this Court has the authority to combine the appraisals of FEB, BUL, and BLC into a single civil action,

Third, and finally, respondents argue that “the appraisal of these three separate Delaware corporations in a single civil action would frustrate Respondents’ right to settle the appraisal claims of single group of shareholders of FEB, BUL, or BLC.”⁵ This is simply not true. As correctly pointed out by the petitioners, in a statutory appraisal, each person who demands an appraisal has the individual right to agree to accept or reject a settlement offer. Moreover, no one

³ Del. Ch., C.A. No. 7959, Jacobs, V.C. (Feb. 22, 1986), *aff’d*, Del. Supr., 564 A.2d 1137 (1989).

⁴ *See id.*, slip op. at 1.

⁵ Defs.’ Opening Br. in Support of its Motion to Sever Appraisal Claims, at 4.

petitioner can require any other petitioner to also settle his or her claim. Thus, I can not see how appraising the value of these three corporations in a single civil action would frustrate the respondents' right to settle the appraisal claims of a single shareholder or a group of shareholders. Accordingly, I deny the respondents' motion to sever.

* * * * *

In light of the above ruling, I deny petitioners' motion to file a sur-reply brief in this matter. I also deny respondents' motion for a protective order, as no good reason exists for discovery not to proceed in the appraisal action at this time.

IT IS SO ORDERED.

Very truly yours,


William B. Chandler III

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