COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ORIGINAL 58

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June 16, 2000

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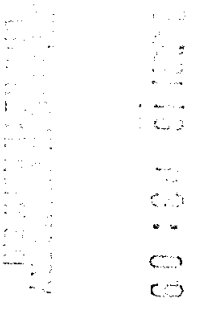

RE: In Re Encore Computer Corporation
Shareholders Litigation
C.A. No. 16044

Dear Counsel:

Two typographical errors were found in the Opinion issued earlier today in the above-captioned matter. Please substitute the enclosed pages 12 and 16 with your copy of the Opinion. I apologize for any inconvenience this may have caused.

Very truly yours,

Jack B. Jacobs

Enclosures
cc: Register in Chancery

supported by specific factual allegations will not be accepted as true.[4]

A. The Duty of Loyalty Claims

It is well-established Delaware law that the business judgement rule creates a "powerful presumption in favor of actions taken by the directors in that a decision made by a loyal and informed board will not be overturned by the courts unless it cannot be 'attributed to any rational business purpose.'"[5] To rebut that presumption, the plaintiffs may allege facts sufficient to plead a cognizable claim for a breach of duty of loyalty, more specifically, that the defendants were materially interested in the transaction or failed to act independently on behalf of the corporation.[6]

I conclude that the plaintiffs have failed to allege facts sufficient to establish that the Encore directors either had a material self-interest in, or failed to act independently with respect to, the challenged transactions. I find also that the complaint in fact alleges that the Sun and the Gores Transactions served legitimate business purposes. My reasons follow.

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[4] Weinberger v. UOP. Inc., Del. Ch., 409 A.2d 1262, 1264 (1979).

[5] Cede & Co. v. Technicolor,&, Del. Supr., 634 A.2d 345, 361 (1993) (citing Sinclair Oil Corp. v. Levien, Del. Supr., 280 A.2d 717, 720 (1971)), see also Mills Acquisition Co. v. MacMillan, Inc., Del. Supr., 559 A.2d 1261, 1279 (1989).

[6] Grobow v. Perot, Del. Supr., 539 A.2d 180, 188 (1988).

were aligned.

Because the plaintiffs have not sufficiently pleaded facts demonstrating that Thomas or Fisher were subject to a disabling interest, the Encore Board's decision to approve the Sun Transaction is entitled to review under the business judgment rule.

The plaintiffs next argue, in the alternative, that even under the business judgment standard they have stated a claim, because the complaint sufficiently alleges that the Sun Transaction lacked any valid business justification. I disagree. Without the Sun Transaction the Encore stockholders would have received nothing. That transaction enabled Encore to discharge significant amounts of debt, while still retaining $30 million for operating purposes. For that to occur, however, it was necessary for Gould to surrender several valuable assets to Sun, including Gould's security interest in the Storage Products Business assets and the Gould License that covered the intellectual property for the Storage Products Business. The consideration for Gould's cooperation was Encore's agreement for Gould to receive $60 million of the Sun Transaction proceeds, which would be used to redeem the preferred stock. Even in that connection, Gould agreed that in any liquidation it would not participate in the first $30 million of distributable assets-- a significant concession because the net proceeds available after paying