

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

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P.O. Box 581
GEORGETOWN, DELAWARE 19947
FACSIM (303) 528-5654

Joseph A. Rosenthal
Rosenthal, Monhait, Gross
& Goddess, P.A.
P.O. Box 1070
Wilmington, DE 19899

Raymond J. DiCamillo
Becky A. Hartshorn
Evan O. Williford
Richards, Layton & Finger
P.O. Box 551
Wilmington, DE 19899

Re: *Oman v. General Cigar Holdings, Inc., et al.*
Civil Action No. 18039

Dear Counsel:

In conjunction with a renewed motion for summary judgment, defendants also move to limit discovery to the voting agreement issues that are 'contained within the renewed motion. For the reasons below, the motion to limit discovery is denied.

Defendants filed a renewed motion for summary judgment after their first motion for summary judgment was denied. I denied the motion because I could not conclude at the time that the shareholder vote on the merger between General Cigar Holdings, Inc. and Swedish Match AB ratified the alleged breaches of fiduciary duty because defendants had not established that the shareholder vote was not coerced.

Defendants' renewed motion for summary judgment attempts to resolve this coercion dispute. Because this motion would be dispositive of the case, defendants concurrently ask that discovery be limited to the issues raised in its renewed motion, specifically the voting agreement, and that all other discovery be stayed.

Plaintiff opposes such a limitation on the discovery because it would be unfair, unworkable and impracticable. Plaintiff argues primarily that the issues contained in the renewed motion are too intertwined with the other issues of the case to be surgically excised.

Defendants fail to establish the good cause required to limit discovery. Court of Chancery Rule 26(c) allows a court to **limit** discovery “for good cause shown” when a limitation is necessary to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” This Court has broad power to regulate discovery in cases pending before it. This power is generally exercised in a manner to best further the twin goals of efficiency and fairness after balancing the competing concerns.’ These competing concerns were succinctly described in *Kahn v. Tremont*, which stated that the court must balance the savings that may be gained by avoiding discovery (if defendant prevails on a case dispositive motion) against the risks associated with delay that may be visited upon plaintiff (in the event defendant loses its case dispositive **motion**).²

Here, defendants assert that a stay of discovery is appropriate where a case dispositive motion is pending and there is no prejudice to the non-moving party.’ It is clear that if there is no prejudice to Mr. Orman, then there is no competing concern to weigh in the balance and the scales would tip in favor of the defendants if good cause is shown. Defendants fail, however, to establish that there is no prejudice to Mr. Ox-man if discovery were to be limited in such a manner.

Defendants rely upon the assertion that such a stay would not be prejudicial because it would be **limited** to a short period of time. I agree with defendants that focusing discovery upon the circumstances surrounding the adoption of the voting agreement would be the most *efficient* way to proceed, if it were possible to limit discovery in such a way. But, as plaintiff points out, such a limitation would not further the equally important goal of *fairness*. A limitation upon discovery that is limited to a short duration does not necessarily make it a fair or non-prejudicial

¹ *Kahn v. Tremont Corp.*, 1992 Del. Ch. LEXIS 165 (Del. Ch.); *In re McCrory Parent Corp.*, 1991 Del. Ch. LEXIS 112 at *2 (Del. Ch.).

² *Kahn v. Tremont Cop.*, 1992 Del. Ch. LEXIS 165 at *6 • *7 (Del. Ch.).

³ “[A] stay of discovery under the rule ‘is appropriate where a potentially case dispositive motion is pending, and there is no prejudice to the non-moving party.’” Renewed Mot. to Limit Discovery at ¶ 15, citing *ABB Flak-t, Inc. v. Nat’l Union Fire Ins. Co.*, 731 A.2d 811,815 (Del. 1999).

limitation. Additionally, the mere presence of a case dispositive motion does not automatically trigger a stay of discovery.'

Plaintiff correctly contends that such a limitation on discovery would not only be unworkable, but it would be unfair. There are simply too many interrelated variables surrounding the issues in this case that cannot be neatly divided and set aside while the renewed motion for summary judgment is pending. Delaware courts have noted that coercion is a fact-intensive issue relating to both the structure and circumstances of a vote.⁵ It is not a neatly contained concept that can be readily excised and examined outside the context of the transaction. Here, the transaction was large and complicated, subject to intricate negotiations, drafting, and discussion. Thus, attempting to confine discovery to issues solely concerning the voting agreement would be unworkable, impracticable, and unfair to the plaintiff.

For the foregoing reasons, defendants' motion to limit discovery is denied.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

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oc: Register in Chancery
xc: Vice Chancellors
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⁴ *Pensionskasse Der Ascoop v. Random Int'l Holding, Ltd.*, 1993 WL 35977 (Del. Ch. 1993).

⁵ *Williams v. Geier*, 671 A.2d 1368, 1382 (Del. 1996).