

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMERALD PARTNERS, a New Jersey limited partnership,	§
	§ No. 295, 2003
	§
Plaintiff Below,	§
Appellant,	§
	§
v.	§ Court Below–Court of Chancery
	§ of the State of Delaware,
RONALD P. BERLIN, DAVID L. FLORENCE, REX A. SEBASTIAN, and THEODORE H. STRAUSS,	§ in and for New Castle County
	§ C.A. No. 9700
	§
	§
Defendants Below,	§
Appellees.	§

Submitted: November 18, 2003

Decided: December 23, 2003

Before **HOLLAND** and **BERGER**, Justices, and **COOCH**, Judge.¹

O R D E R

This 23rd day of December 2003, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) The basic facts are set forth in several prior opinions of this Court.²

2) Emerald Partners now appeals from a decision of the Court of Chancery, following remand from this Court, holding that the 1988 merger

¹ Sitting by designation pursuant to Supreme Court Rule 2 and Del. Const. art. IV § 12.

² *Emerald Partners v. Berlin*, 787 A.2d 85 (Del. 2001); *Emerald Partners v. Berlin*, 726 A.2d 1215 (Del. 1999); *Emerald Partners v. Berlin*, 552 A.2d 482 (Del. 1988).

between May Petroleum, Inc. and Hall Real Estate Group was entirely fair. Emerald Partners argues that the seriously flawed process by which the merger was negotiated precludes a finding of entire fairness; that May's directors breached their duty of good faith; that the disclosures in connection with the merger were inaccurate and misleading; and that the May defendants failed to establish that the merger price was entirely fair.

3) The Court of Chancery found several deficiencies in the merger negotiations, and we agree with its comment that “process laxity . . . cannot be condoned . . .”³ Indeed, we find that the many process flaws in this case raise serious questions as to the independent directors’ good faith, *e.g.*, the independent directors evidenced a “we don’t care about the risks” attitude by repeatedly failing to exclude Hall from their deliberative process and by giving Hall continuous direct and prior access to the valuation expert hired to advise the independent directors.⁴ But, the Court of Chancery found that the price was fair and this Court accords a “high level of deference” to Court of Chancery findings based upon the evaluation of expert financial testimony.⁵ In this case, we agree with its analysis on the issue of price.

³ *Emerald Partners v. Berlin*, 2003 WL 21003437 (Del. Ch.) at *23.

⁴ See *In re Walt Disney Co. Derivative Litigation*, 825 A.2d 275, 289 (Del. Ch. 2003).

⁵ *Cinerama v. Technicolor*, 663 A.2d 1156, 1179 (Del. 1995).

4) Thus, we need not address the good faith claim because, even if the May directors would not be protected by the exculpation provision in their company's certificate of incorporation, they are not liable for any monetary damages.⁶ Finally, we conclude the Court of Chancery's analysis rejecting Emerald Partners' disclosure claim is supported by the record and the product of a logical deductive process.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ *Emerald Partners v. Berlin*, 787 A.2d 85 (Del. 2001).