

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIAGARA CORPORATION, )  
 ) No. 385, 2006  
 Defendant Below, )  
 Appellant/Cross Appellee ) Court Below: Court of Chancery  
 ) of the State of Delaware in  
 v. ) and for New Castle County  
 )  
 WYNNEFIELD PARTNERS ) C.A. No. 1261-N  
 SMALL CAP VALUE L.P., )  
 )  
 Plaintiff Below )  
 Appellee/Cross Appellant. )

Submitted: August 31, 2006  
Decided: September 1, 2006

Before, **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

***ORDER***

This 1<sup>st</sup> day of September 2006, upon consideration of the record in this case, the briefs of the parties and their contentions at oral argument it appears to the court that:

(1) On April 14, 2005, Wynnefield Partners Small Cap Value, L.P., a shareholder of Niagara Corporation, filed an action pursuant to 8 *Del. C.* 220 seeking to obtain certain of Niagara's books and records relevant to Niagara's decision to deregister its stock on April 27, 2004, and Niagara's decision to conduct a reverse-forward stock split on December 31, 2004. The Court of Chancery held a two-day trial on September 12th and 13th, 2005. After post-trial

briefing and argument, which occurred from October 2005 to February 2006, the Vice Chancellor filed a memorandum opinion<sup>1</sup> on June 19, 2006, granting in part, and denying in part Wynnefield's request to inspect Niagara's books and records.

(2) On July 14, 2006, Niagara moved in the Court of Chancery for a stay pending appeal and filed a notice of appeal to this Court. On July 29, 2006, Wynnefield filed a notice of cross-appeal. On August 9, 2006, the Vice Chancellor denied Niagara's motion for a stay pending appeal and ordered Niagara and Wynnefield to confer and to submit a confidentiality order by August 16, 2006, and to make the books and records available to Wynnefield's counsel forthwith after doing so.<sup>2</sup>

(3) Consequently, on August 11, 2006, Niagara filed a motion for expedited scheduling and to stay execution of the Vice Chancellor's August 9th Order, and a motion for a stay pending appeal. Wynnefield filed a response opposing Niagara's motion to stay execution of the August 9th Order and motion for a stay pending appeal, and, in the alternative, moved to expedite on August 15, 2006. The next day we granted Niagara's motion for a stay pending appeal and Wynnefield's motion to expedite. We also set a briefing schedule with Niagara's

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<sup>1</sup> *Wynnefield Partners Small Cap Value L.P. v. Niagara Corp.*, 2006 Del. Ch. LEXIS 119 (Del. Ch. June 19, 2006).

<sup>2</sup> *Wynnefield Ptnrs. Small Cap Value L.P. v. Niagara Corp.*, 2006 Del. Ch. LEXIS 144 (Del. Ch. August 9, 2006).

Opening Brief due on August 23, 2006, and Wynnefield's Answering Brief due August 30, 2006. Thereafter, on August 22, 2006, we entered an ordered amending the briefing schedule. Pursuant to the amended brief schedule, Niagara filed its opening brief on August 23, 2006, Wynnefield filed its combined answering brief/opening brief on cross-appeal on August 28, 2006, and Niagara filed its answering brief on cross-appeal on August 30, 2006. We held oral argument on August 31, 2006. We now affirm in part and reverse in part the Court of Chancery's June 19, 2006 Memorandum Opinion.<sup>3</sup>

(4) In its demand letter, Wynnefield requested ten different categories of documents. The Vice Chancellor determined that Wynnefield was entitled to the documents requested in nos. 1-2 and 8-10, but not those in nos. 3-7.<sup>4</sup> We have concluded that the Vice Chancellor properly granted Wynnefield's requests for documents listed in nos. 1-2, properly denied Wynnefield's requests for documents

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<sup>3</sup> For a full recitation of the relevant facts see *Wynnefield Ptnrs.*, 2006 Del. Ch. LEXIS 119. This Order is necessarily abbreviated given the nature of this appeal. We expedited the case and expedited our Order resolving the case because, on September 6, 2006, Niagara will hold a shareholders meeting at which its shareholders will vote to approve what is essentially a "going-private" merger with a third party, in which remaining shareholders will be cashed out. Niagara's board has already approved the merger. Wynnefield is concerned that if the shareholders vote to approve the merger on September 6th, the board may consummate the merger as soon as September 7, 2006, thereby eliminating Wynnefield's standing as shareholder to receive documents under Section 220 and mooted this appeal. Because this Order is expedited and conclusory, our decision is necessarily tailored to the specific facts of this case.

<sup>4</sup> *Id.* at \*59-61.

listed in nos. 3-7, but improperly granted its requests for documents listed in nos. 8-10.

(5) We begin with the observation that under 8 *Del. C.* 103(d) and the internal affairs doctrine, the reverse-forward stock split was effective on December 31, 2004, at the time the documents were filed with the Secretary of State.<sup>5</sup> For purposes of the Delaware law governing Niagara's internal affairs, when the market gave effect to the reverse-forward stock split is of no consequence. We are also satisfied that here the record date and the effective date of the reverse-forward stock split was December 31, 2004.

(6) In requests no. 1-2, Wynnefield demanded Niagara's stock ledger and list of stockholders as of December 31, 2004, January 1, 2005, January 3, 2005, and January 7, 2005, as well as all of the daily transfer sheets showing changes in the list of holders of record of the Corporation's common stock from the opening of business on December 31, 2004, through the close of business on January 7, 2005. Niagara provided Wynnefield the stocklists, but did not provide the daily transfer sheets and the list showing the number of DTC participants.<sup>6</sup> We are

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<sup>5</sup> 8 Del C. 103(d) provides, in part; "Any instrument filed in accordance with subsection (c) of this section shall be effective upon its filing date. Any instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but such time shall not be later than a time on the 90th day after the date of its filing." *See generally VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108 (Del. 2005) (discussing the internal affairs doctrine).

<sup>6</sup> *Id.* at \*50-60.

satisfied that the Vice Chancellor properly granted Wynnefield's requests nos. 1-2. Moreover, Wynnefield is entitled to the DTC participant lists and the daily transfer sheets.<sup>7</sup> With these documents, Wynnefield will be able to determine whether Niagara complied with the applicable federal securities laws given the December 31, 2004, effective date for the reverse-forward stock split.

(7) We are also satisfied that the Vice Chancellor properly denied Wynnefield's requests nos. 3-7. Wynnefield did not satisfy its burden to produce credible evidence of wrongdoing with respect to Niagara's decision to deregister, to remain deregistered, and to effect the forward-reverse stock split. Wynnefield's claims on appeal about the admission of the hearsay evidence have no merit.

(8) Finally, we reverse the Vice Chancellor's ruling granting Wynnefield's request nos. 8-10. These requests aim to determine when the market gave effect to the reverse-forward stock split. Given that the reverse-forward split occurred on December 31, 2004, when the split became "effective in the market" is irrelevant under Delaware law. Wynnefield did not produce credible evidence of wrongdoing to support these requests.

NOW, THEREFORE, IT IS ORDERED that the judgment on appeal of the Court of Chancery set forth in its June 19, 2006 memorandum opinion is affirmed

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<sup>7</sup> See e.g. *Hatleigh Corp. v. Lane Bryant, Inc.*, 428 A.2d 350 (Del. Ch. Feb. 5, 1981).

in part, reversed in part, and remanded. The judgment of the Court of Chancery on cross-appeal is affirmed. The Clerk is directed to issue the mandate forthwith.<sup>8</sup>

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>8</sup> Sup. Ct. R. 4(f).