SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA R. KAPNICK Justice PART 39

Index Number : 650253/2012
KEBIS, PAMEL E
vs.
AZZURRO CAPITAL INC.
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 1/21/14

_____, J.S.C.
BARBARA R. KAPNICK
J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

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PAMELA E. KEBIS, derivatively on behalf of Nominal Defendant TRAVELZOO, INC.,

Plaintiff,

- against -

AZZURRO CAPITAL INC., RALPH BARTEL, HOLGER BARTEL, DAVID J. EHRLICH, KELLY M. URSO and DONOVAN NEALE-MAY,

Defendants,

- and -

TRAVELZOO INC.,

Nominal Defendant.

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DECISION/ORDER
Index No. 650253/12
Motion Seq. Nos.
001, 002 and 003

BARBARA R. KAPNICK, J.:

This is a shareholder derivative action brought against the members of Travelzoo Inc.'s ("Travelzoo") Board of Directors to remedy alleged breaches of fiduciary duties and unjust enrichment. In a nutshell, plaintiff challenges as unfair the sale, in the Fall of 2009, of Travelzoo's Asia Pacific division to the Company's then Chairman, Founder and majority stockholder, defendant Ralph Bartel, for $3.6 million.

Three motions are now before the Court. In motion seq. no. 001, defendants Ralph Bartel, Holger Bartel and nominal defendant Travelzoo move to dismiss the Complaint with prejudice pursuant to CPLR 3211 (a) (1), (3) and (7), and 3016(b). In motion seq. no. 002, defendants David J. Ehrlich ("Ehrlich"), Donovan Neale-May

("Neale-May") and Kelly M. Urso ("Urso") move to dismiss the Complaint pursuant to CPLR 3211 (a) (3) and (7) and 3016(b). In motion seq. no. 003, Travelzoo moves, pursuant to section 627 of the Business Corporation Law ("BCL"), for an order requiring plaintiff to provide security for the reasonable expenses, including attorneys' fees, that Travelzoo has and will expend to defend this derivative action. At oral argument on these motions, the parties stipulated that Travelzoo's request for security would be deferred until the motions to dismiss were decided, and, if the Complaint was not dismissed, addressed at the first scheduled conference (Tr. 33:3-34:16, Oct. 22, 2012.)

Background

Plaintiff Pamela E. Kebis claims that she is, and was at all times relevant to this lawsuit, a shareholder of Travelzoo, a company founded in 1998 by Ralph Bartel. (Complaint, ¶¶ 2, 5.) Travelzoo is a global internet media company in the business of publishing travel, entertainment and local deals. (*Id.*, ¶¶ 3, 16.) Most of its revenues are generated through advertising fees. (*Id.*)

Defendant Azzurro Capital Inc. ("Azzurro Capital") is a company, 100% of which is held indirectly by Ralph Bartel through the Ralph Bartel 2005 Trust. (*Id.*, ¶ 4.) Azzurro Capital allegedly owned approximately 66.3% of Travelzoo's outstanding common stock

as of March 31, 2009, and was, therefore, the controlling shareholder of Travelzoo as of the date of the events that form the basis of this lawsuit. (*Id.*) As of the filing of this action on January 12, 2012, plaintiff alleges that Azzurro Capital held approximately 51.6% of Travelzoo's outstanding common stock. (*Id.*) According to Travelzoo's public filings, the Company was controlled by Ralph Bartel and Azzurro Capital at all times between March 2009 and May 2011, and they elect the Company's entire Board of Directors. (*Id.*, ¶¶ 18-21.)

Ralph Bartel has been a director of Travelzoo since July 2010. (*Id.*, ¶ 5.) He previously served as Chairman of the Board from May of 1998 to June of 2010; and also as Chief Executive Officer of Travelzoo from May 1998 to September 2008. (*Id.*)

Defendant Holger Bartel is the brother of Ralph Bartel. (Complaint, ¶ 6.) Holger Bartel has been a director of Travelzoo since June of 2005, Chairman of the Board since July 2010, and was the Company's Chief Executive Officer from October 1, 2008 through June 30, 2010. (*Id.*) Defendants Ehrlich, Urso, and Neale-May have served as directors of Travelzoo since February of 1999, and each have been a member of the Board's audit committee since at least 2002. (*Id.*, ¶¶ 7-9.)

On August 14, 2009, Travelzoo announced that it had entered into a non-exclusive letter of intent and non-binding term sheet to sell substantially all of the assets of the Company's Asia Pacific division to a new company to be formed by Ralph Bartel. (Complaint, ¶ 23.) In connection with the announcement, Holger Bartel explained that Travelzoo could enhance shareholder value by transferring the capital then at work in the Asia Pacific region to Europe and North America, as well as to its nascent "Fly.com" search engine. (*Id.*, ¶ 24.) Travelzoo formed a Special Committee of directors to oversee this transaction, composed of defendants Ehrlich, Urso and Neale-May. (*Id.*, ¶ 25.) Ehrlich made the following two announcements in connection with the proposed transaction:

> Absent [ ] a superior offer from another party, we anticipate closing a transaction with Mr. Bartel in a relatively short period of time, thereby conserving company capital for alternative uses.
>
> * * *
>
> Having a knowledgeable, well-capitalized party take over and fund Travelzoo's Asia Pacific business, with the option to re-acquire the business in the future, is an attractive and prudent alternative. In this way, Travelzoo's brand exposure and content in the region will be further developed while the company's capital resources may be conserved or more judiciously applied elsewhere. While the Asia Pacific division is showing steady growth, it remains capital intensive.

(*Id.*)

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On September 30, 2009, following a recommendation by the Special Committee and Board approval, Travelzoo and its Asia Pacific subsidiaries entered into asset purchase agreements with Azzurro Capital. (*Id.*, ¶ 26.) The purchase price was $3.6 million, subject to a working capital adjustment (*Id.*). Travelzoo was given a 30-day "go-shop" period, during which time it could solicit other proposals, and accept a superior offer from another buyer by paying a $54,000 termination fee to Azzurro Capital. (*Id.*, ¶ 27.) However, the Board authorized the Company's management to terminate the go-shop period early if management determined that a qualified bidder was not likely to make a superior offer within that time period. (*Id.*, ¶ 28.)

The Complaint alleges that Travelzoo never disclosed to its shareholders whether it received any offers during the go-shop period or even if the Company shopped the opportunity to potential alternative purchasers. (*Id.*, ¶ 29.)

On October 31, 2009, the Company completed the sale of the Asia Pacific division to Azzurro Capital at the agreed upon price of $3.6 million, subject to a working capital adjustment. (*Id.*, ¶ 31.)

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Plaintiff alleges that the sale was "manifestly unfair" and "fundamentally unfair" to Travelzoo, because the market value of the Asia Pacific assets was far greater than $3.6 million. (*Id.*, ¶¶ 32, 34). They cite to statements made by Holger Bartel in the quarters preceding the transaction in which he is alleged to have repeatedly stated that the Asia Pacific markets were "new revenue" opportunities for Travelzoo and would provide a "competitive advantage from being able to cross-sell advertising globally." (*Id.*, ¶ 33.)

Plaintiff further challenges as unfair the process by which the transaction was proposed, negotiated and entered into (*id.*, ¶ 36), since each member of the Special Committee is allegedly "beholden" to Ralph Bartel and Azzurro Capital. (*Id.*, ¶ 37.) In addition, plaintiff alleges that, upon information and belief, neither the Board nor the Special Committee: (1) retained any independent legal counsel, financial advisor, or other advisors or experts to advise them in connection with the Asia Pacific transaction; (2) sought or obtained any "fairness opinion" regarding the transaction; (3) engaged in any meaningful negotiations with Azzurro Capital or Ralph Bartel regarding the terms of the transaction; or (4) considered any alternative transactions or terms. (*Id.*, ¶ 38.)

Plaintiff concedes that she did not make a demand upon Travelzoo's Board prior to commencing this lawsuit. (*Id.*, ¶ 44.) The Complaint alleges that "[s]uch demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action." (*Id.*) Plaintiff further alleges that Ralph Bartel and Azzurro Capital, the Company's controlling shareholders, "had a conflicting self-interest in and stood on both sides of the Asia Pacific Transaction." (*Id.*, ¶ 45.)

> Accordingly, as a matter of law, the business judgment rule does not protect the Board's or the Special Committee's decision to approve the transaction. Rather, Defendants bear the burden of proving the entire fairness of the transaction, which they have not done and cannot do so. Consequently, no demand on the Board is required.

(*Id.*)

The Complaint has asserted three causes of action. The first cause of action asserts that the individual defendants breached their fiduciary duties to Travelzoo by failing to make a good faith effort to fully inform themselves about the transaction and by failing to ensure that it was entirely fair to Travelzoo. (*Id.* ¶¶ 46-49.) The second cause of action alleges that Azzurro Capital and Ralph Bartel breached their fiduciary duties, as controlling stockholders of Travelzoo, to ensure that the Asia Pacific transaction was entirely fair to Travelzoo. (*Id.* ¶¶ 50-53.) The

third cause of action alleges that Azzurro Capital and Ralph Bartel were unjustly enriched by the Asia Pacific transaction. (*Id.*, ¶¶ 54-56.)

Discussion

Travelzoo is a Delaware Corporation, and all parties agree that Delaware law applies to this derivative action. *Wilson v Tully*, 243 AD2d 229, 232 (1st Dept 1998).

Nominal defendants Travelzoo and the Bartel defendants first argue that the Complaint should be dismissed, pursuant to CPLR 3211 (a) (3), because the plaintiff lacks derivative standing to bring this action. Specifically, they argue that the plaintiff did not sufficiently plead her ownership of Travelzoo stock at the time of the Asia Pacific transaction through the time of this litigation, in contravention of the "continuous ownership" rule applied in Delaware to determine derivative standing, citing both Delaware Chancery Court Rule 23.1 (a) and 8 Del C § 327. Rule 23.1 (a) provides that "the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law."

Similarly, Section 327 of Delaware's General Corporation Law provides:

> In any derivative suit instituted by a stockholder of a corporation, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of which such stockholder complains or that such stockholder's stock thereafter devolved upon such stockholder by operation of law.

In this case, plaintiff alleges that she "was a shareholder of Travelzoo at the time of the wrongdoing alleged herein, and has been a shareholder of Travelzoo continuously since that time" (Complaint, ¶ 2.)

There appears to be some conflict in the law on whether a derivative plaintiff must plead with particularity the details of her stock ownership. Travelzoo and the Bartels cite cases where courts have held that such boilerplate assertions, without any supporting facts as to the timing and amount of the plaintiff's stock ownership, were insufficient to plead derivative standing, *see DiLorenzo v Norton*, 2009 WL 2381327, *3 (DDC, July 31, 2009); *In re Verisign, Inc., Derivative Litig.*, 531 F Supp 2d 1173, 1187-1188, 1202 (ND Cal 2007). Plaintiff, on the other hand, cites cases that have held that allegations identical to those in her Complaint were sufficient for purposes of Fed. R. Civ. P. 23.1, which is virtually identical to Delaware Chancery Court Rule 23.1, *see Garza ex rel. Navistar Intern. Corp. v Belton*, 2010 WL 3324881, *9 (ND Ill, Aug. 13, 2010); *Plymouth County Retirement Ass'n. v*

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Schroeder, 576 F Supp 2d 360, 374 (ED NY 2008); *Kalin v Xanboo, Inc.*, 526 F Supp 2d 392, 407 (SDNY 2007).

This Court finds the following reasoning of Judge Gottschall in the *Garza* case to be persuasive:

> Specific allegations regarding dates of purchase and ownership may be the 'best practice,' but the court cannot agree that [Fed. R. Civ. P.] 23.1(b)(1) requires pleading with particularity (or, alternatively, that Rule 23.1(b)(1)'s notice pleading requirement requires pleading specific dates of stock ownership). The rule's drafters knew how to require that elements of a derivative action be pleaded with particularity and chose not to require that the contemporaneous stock ownership requirement be so pleaded. While Rule 23.1(b)(3) mandates that the plaintiff 'state with particularity' his reasons excusing demand on the corporation, Rule 23.1(b)(1) requires only that the plaintiff 'allege' contemporaneous stock ownership. Therefore, the court agrees with the authority from the Second Circuit enforcing general notice pleading standards with respect to allegations of contemporaneous stock ownership.

Garza ex rel. Navistar Intern. Corp., 2010 WL 3324881, *10 (internal citations omitted). Here, since neither Chancery Court Rule 23.1 nor 8 Del C § 327 require particularity with respect to a derivative plaintiff's stock ownership,[1] this Court finds that the plaintiff's allegation of her stock ownership in Travelzoo is sufficient.

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[1] BCL § 626 (b) also does not require a complaint to plead with particularity a derivative plaintiff's continuous stock ownership.

Next, all defendants move for dismissal of the Complaint on the ground that the Complaint fails to plead, with the requisite particularity required by Chancery Court Rule 23.1, facts establishing that a demand on Travelzoo's Board to take action to remedy the alleged unfairness of the Asia Pacific transaction would have been futile.

"The decision whether to initiate or pursue a lawsuit on behalf of the corporation is generally within the power and responsibility of the board of directors," *In re Citigroup Inc. Shareholder Derivative Litigation*, 964 A2d 106, 120 (Del Ch 2009); *see also White v Panic*, 783 A2d 543, 550 (Del 2001). Since a derivative action impinges on the managerial freedom of directors, a shareholder must first make a pre-suit demand on the Board of Directors to take remedial action so that the directors have the opportunity to examine the alleged claim and determine whether pursuing the claim is in the best interests of the corporation, *Aronson v Lewis*, 473 A2d 805, 811-812 (Del 1984). The demand requirement of Rule 23.1 is a "form of alternate dispute resolution" that is designed to give the corporation the opportunity to rectify shareholder complaints without litigation, and to control any litigation which does arise (*Id.* at 812).

Circumstances do sometimes exist, however, under which making a demand upon a Board will prove a fruitless and futile gesture, and is therefore excused. Pursuant to the seminal test articulated in *Aronson v Lewis,* demand upon a Board of Directors is excused where a plaintiff pleads particularized facts (as required by Rule 23.1) which raise a reasonable doubt that: "(1) the directors are disinterested and independent [or] (2) the challenged transaction was otherwise the product of a valid exercise of business judgment" *Brehm v Eisner*, 746 A2d 244, 253 (Del 2000), citing *Aronson v Lewis*, 473 A2d at 814; *see also In re Citigroup Inc. Shareholder Derivative Litig.*, 964 A2d at 120; *Security Police & Fire Professionals of Am. Retirement Fund v Mack*, 93 AD3d 562, 563 (1st Dept 2012).

In the instant case, despite the Complaint's allegations that each member of the Special Committee was "beholden" to Ralph Bartel and Azzurro Capital, and a majority of the Board was not truly disinterested or independent (*see* Complaint, ¶ 37), on this motion, plaintiff does not challenge the independence of the three members of the Special Committee and, thus, makes no argument of demand futility under the first prong of the *Aronson* test. (Tr. 16:5-11.)

In explaining *Aronson's* second prong, the Delaware Supreme Court has stated that a plaintiff bears a "'heavy burden' of showing

that the well-pleaded allegations in the complaint create a reasonable doubt that the board's decisions were 'the product of a valid exercise of business judgment'" *White v Panic*, 783 A2d at 551, quoting *Aronson v Lewis*, 473 A2d at 814.

> Plaintiffs may rebut the presumption that the board's decision is entitled to deference by raising a reason to doubt whether the board's action was taken on an informed basis or whether the directors honestly and in good faith believed that the action was in the best interests of the corporation. Thus, plaintiffs must plead particularized facts sufficient to raise (1) a reason to doubt that the action was taken honestly and in good faith or (2) a reason to doubt that the board was adequately informed in making the decision.

In re The Walt Disney Co. Derivative Litig., 825 A2d 275, 286 (Del Ch 2003). Four years later, the Delaware Chancery Court ruled that whether a transaction falls beyond the bounds of the business judgment rule for *Aronson* purposes turns on whether a complaint pleads facts sufficient to allow a court to infer that a Board of Directors "knew that material decisions were being made without adequate deliberation in a manner that suggests that [the Board of Directors] did not care shareholders would suffer a loss" *In re Tyson Foods, Inc. Consol. Shareholder Litig.*, 919 A2d 563, 595 (Del Ch 2007). The Chancellor in *Tyson Foods* characterized this as "a scienter-based test," and stated that "a complaint must allege not only that the directors were incorrect in their assessment at the time" of a decision relating to an insider transaction, "but that

they either intended to harm shareholders, or at least were absolutely careless in the matter." (*Id.*).

Plaintiff argues that she has met her burden by pleading that Ralph Bartel and Azzurro Capital, the majority and controlling stockholders of Travelzoo at the time of the Asia Pacific transaction, "stood on both sides" of the Asia Pacific transaction (Complaint, ¶ 45). Given these facts, plaintiff argues that the business judgment standard articulated by the Delaware Supreme Court in *Aronson* gives way to the more stringent "entire fairness" standard in determining whether making demand on the Board in protest of the Asia Pacific transaction was futile. Plaintiff relies principally on *Kahn v Tremont Corp.*, 694 A2d 422, 428 (Del 1997), where the Delaware Supreme Court held that in evaluating a transaction where "a controlling shareholder stands on both sides of the transaction the conduct of the parties will be viewed under the more exacting standard of entire fairness as opposed to the more deferential business judgment standard."

Kahn was a post-trial opinion in which the Court was discussing the fairness of the challenged transaction, not pleading demand futility. In addition, none of the three cases cited by the Delaware Supreme Court in *Kahn* (*Weinberger v UOP, Inc.*, 457 A2d 701 [Del 1983]; *Rosenblatt v Getty Oil Co.*, 493 A2d 929 [Del 1985]; and

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Kahn v Lynch Communications Systems,Inc., 638 A2d 1110 [Del 1994]), apply the entire fairness doctrine to the concept of demand futility. Indeed, an earlier decision in the *Kahn* litigation by the Court of Chancery applied the *Aronson* test to determine if demand futility had been excused, *Kahn v Tremont Corp.*, 1994 WL 162613, * 5-6 (Del Ch, Apr. 21, 1994). Even though the transaction at issue in *Kahn* alleged self-dealing by a controlling shareholder, the Court of Chancery applied the business judgment rule in analyzing the second prong of the *Aronson* test, calling it a "high" legal test, "similar to the legal test for waste" (*Id.*, at *6; *see also International Painters and Allied Trades Industry Pension Fund v Cantor Fitzgerald L.P.*, 2013 WL 5311203 (Sup Ct., NY Co. Sept. 23, 2013).

The Complaint in this action does not plead with particularity sufficient facts to raise a reasonable doubt that the actions of Travelzoo's Board were taken honestly and in good faith, or that the Board was not sufficiently informed so as to rise to a level approaching scienter. The Complaint simply recites the basic terms of the Asia Pacific transaction, some public statements made by Holger Bartel regarding the sale, and concludes that the negotiation process, terms, price and other aspects of the Asia Pacific transaction were fundamentally unfair to Travelzoo without providing any real facts to support these assertions.

Many of the plaintiff's allegations of unfairness stem from a lack of information about the transaction, i.e., whether any offers were received during the 30-day go-shop period. (*see* Complaint, ¶29). Plaintiff concedes that her allegations regarding how the transaction was negotiated, reviewed and approved by the Special Committee and the Board are based "upon information and belief." (Complaint, ¶ 38.) It should be noted that at least some details of the negotiation process could have been acquired by the plaintiff without formal discovery, as Delaware General Corporate Law Section 220 (b) (2) allows a stockholder to examine the books and records of a corporation. Delaware courts have repeatedly urged would-be derivative plaintiffs to use this information gathering tool before filing complaints so that they can satisfy Rule 23.1's requirement that facts be alleged "with particularity" justifying demand excusal, *see e.g. Rales v Blasband*, 634 A2d 927, 934, n 10 (Del 1993); *In re Citigroup Inc. Shareholders Litigation*, 2003 WL 21384599, * 1 (Del Ch, June 5, 2003), *aff'd sub nom. Rabinovitz v Shapiro*, 839 A2d 666 (Del 2003). "[T]he demand requirement of Chancery Rule 23.1 exists at the threshold, first to insure that a stockholder exhausts his intracorporate remedies" prior to commencing litigation, *Aronson v Lewis*, 473 A2d at 811-812.

In addition to plaintiff's lack of knowledge about the details of the transaction, she makes at least one allegation which is

contrary to the public filings upon which she relies to frame her Complaint. Where a shareholder's derivative complaint expressly refers to, and heavily relies upon, the company's public filings, those documents are "considered to have been incorporated into the Complaint," and may be considered on a motion to dismiss, *Freedman v Adams*, 2012 WL 1345638, * 2, n 7 (Del Ch, Mar. 30, 2012), *aff'd* 58 A3d 414 (Del 2013); *see also In re Synthes, Inc. Shareholder Litigation*, 50 A3d 1022, 1026 (Del Ch 2012). Here, the Complaint alleges that Travelzoo never disclosed whether "it shopped the opportunity to potential alternative suitors." (Complaint, ¶ 29.) However, the Company's Form 8-K, dated September 30, 2009, specifically states that "Travelzoo initiated the solicitation of other offers following the signing of the letter of intent [with Ralph Bartel]" (Hakki Aff., Ex. 7, at 2).

The Complaint itself concedes some legitimate business reasons existed for selling the Asia Pacific division, i.e., the comments of Holger Bartel in Travelzoo's August 14, 2009 press release that the division was "capital intensive" and the Company believed that it could enhance shareholder value by transferring the capital then at work in the Asia Pacific region to Europe and North America, as well as to its new "Fly.com" search engine (Complaint, ¶¶ 24-25). Plaintiff omits to point out that in that same press release upon which it relied so heavily, the Company reported that "[f]or the twelve months ended June 30, 2009, Travelzoo's Asia Pacific

division reported revenues of approximately $1.5 million and an operating loss of approximately $7.8 million" (Hakki Aff., Ex. 6). The Complaint also concedes that Travelzoo retained the right to re-acquire the Asia Pacific division in the future. (Complaint, ¶ 25.)

Plaintiff's conclusory allegations challenging the manner in which the Asia Pacific transaction was undertaken as unfair do not come close to rebutting the presumption of the business judgment rule. Delaware law is clear that this prong is directed to cases in which a "decision is so extreme or curious as to itself raise a legitimate ground to justify further inquiry and judicial review", *Highland Legacy Ltd. v Singer*, 2006 WL 741939, *7 (Del Ch, Mar. 17, 2006). Plaintiff's challenge to the $3.6 million purchase price is effectively a claim for waste, but the Complaint fails to allege facts that would show that "the ethics of the transaction were so flawed that no disinterested person of right mind and ordinary business judgment could think the transaction beneficial to the corporation" *Harbor Finance Partners v Huizenga*, 751 A2d 879, 893 (Del Ch 1999).

Since the entire Complaint is being dismissed for failure to meet the exacting burden of pleading demand futility under Delaware Chancery Court Rule 23.1, the Court need not address defendants' motions to dismiss on the basis of failure to state a claim for

relief, *Security Police & Fire Professionals of Am. Retirement Fund v Mack*, 93 AD3d at 565, citing *Jacobs v Yang*, 2004 WL 1728521, *1 (Del Ch, Aug. 2, 2004), *aff'd* 867 A2d 902 (Del 2005).

Plaintiff's request for leave to replead is denied, because she fails to identify any additional factual allegations which would remedy the Complaint's deficiencies.

Conclusion and Order

For the foregoing reasons, it is hereby

ORDERED that defendants' motions (mot. seq. nos. 001 and 002) to dismiss the Complaint are granted, and the Complaint is dismissed in its entirety with prejudice and without costs or disbursements; and it is further

ORDERED that Travelzoo's motion (mot. seq. no. 003) for security for expenses pursuant to Business Corporation Law § 627 is denied as moot.

This constitutes the decision and order of this Court.

Dated: January 21, 2014

BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.