



Court of Chancery Issues Rare Pre-Discovery Dismissal of Entire Fairness Claim

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In February, in an offshoot of the dwindling SPAC boom, the Delaware Court of Chancery dismissed a shareholder derivative lawsuit in *In re Skillsoft Stockholders Litigation*, No. 2023-1179-JTL (Feb. 7, 2025). Notably, Vice Chancellor J. Travis Laster dismissed the case even though it evaluated the transaction under the demanding entire fairness standard. The court recently denied the plaintiffs' motion for reargument, briefly noting that it "did not misapprehend any issue of fact or law." *In re Skillsoft Stockholders Litigation*, No. 2023-1179-JTL (Mar. 27, 2025).

Education technology company Skillsoft went public via a de-SPAC merger in June 2021. One investor, Prosus N.V., was a key player in the deal: Prosus invested \$500 million in the merger, giving it a 38.4% stake in Skillsoft.

Several months later, in November 2021, Skillsoft bought Codecademy, a programming training platform. Prosus had invested in Codecademy earlier that year, in February, and owned a 24% share.

When Skillsoft's stock price decreased after the acquisition, stockholders brought a derivative action. They alleged that Prosus, as a major stockholder, influenced the Skillsoft board into rubber-stamping the acquisition of Codecademy at an inflated price. They claimed the price paid for Codecademy was greater than the valuation at which Prosus had invested earlier that year, despite an alleged downturn in Codecademy's prospects in the interim.

The complaint charged Prosus and the Skillsoft directors with breaches of fiduciary duty, alleging that Prosus stood on both sides of the sale because it had invested in Codecademy. Eight of the nine Skillsoft directors, the plaintiffs alleged, were beholden to Prosus and therefore conflicted. Prosus and the directors each moved to dismiss the complaint.

As a threshold matter, Vice Chancellor Laster held the plaintiffs had alleged demand futility and were excused from making an initial demand on the board before filing suit. Under the *Zuckerberg* standard, which Vice Chancellor Laster himself had originally conceived, the plaintiffs had to show that a majority of the Skillsoft directors were either interested in the transaction

or dependent on an entity interested in the transaction. Six of the nine directors qualified under this test, the court held.

With the way cleared for consideration of the 12(b)(6) motion, a critical issue was whether Prosus was a controlling stockholder of Skillsoft. If it was, since it stood on both sides of the sale, entire fairness review would apply to the motion to dismiss, requiring the defendants to meet a high—but not insuperable—burden.

Vice Chancellor Laster agreed with the plaintiffs that the standard of review should be entire fairness, but in a rare move, he still dismissed the complaint. Entire fairness review applied, Vice Chancellor Laster found, because it was reasonably conceivable that Prosus was a controlling stockholder.

Prosus had argued it was not a controller because it was a minority shareholder with a 37.5% share of Skillsoft, and the two directors it had nominated to the board had recused themselves from deliberations. The court disagreed, holding that the idea that a stockholder with a 37.5% share was not a controller was “just not true in the real world.” The court pointed to Delaware’s anti-takeover statute (8 Del. C. § 203) and the company charter as persuasive authority to hold the threshold for control at 20%. Various factors could rebut that presumption, but none of them were present here.

Although entire fairness review applied, the court held, the complaint should still be dismissed entirely. The dispositive fact was that Prosus owned a bigger interest on the buy side of the transaction—37.5%, as opposed to 24% on the sell side. Prosus’s interests were aligned not with Codecademy but with Skillsoft. That was enough to conclude that economic fairness, or fair price, was satisfied. “In that setting, overpaying is not a way to transfer value. It’s a way to deplete value,” the court said. That was “enough to negate the inference of pricing unfairness, at least absent some other explanation.”

That fact eclipsed the court’s concerns about procedural fairness, including the contrary fact that there was “relatively little board involvement.” Because Prosus’s interest was aligned with Skillsoft, and the directors’ interests were aligned with Prosus, entire fairness was satisfied.

This was the “rare case,” Vice Chancellor Laster concluded, when “at the pleading stage, in the face of the application of the entire fairness test, [one] cannot reasonably infer [un]fairness.” Rare, but not unprecedented: as this [blog](#) previously reported, the Delaware Court of Chancery recently dismissed an entire fairness claim in *White v. Hennessy*, where Sidley represented the defendants.