

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALLISON HUYNH, derivatively on	:
behalf of SUITABLE TECHNOLOGIES, INC.,	:
	:
Plaintiff,	:
	:
v	:
	: C. A. No.
	: 2019-0893-JTL
SCOTT HASSAN, BLUE OCEAN ROBOTICS	:
HOLDINGS APS, BEAM ROBOTS APS, BEAM	:
ROBOTS US INCORPORATED,	:
	:
Defendants,	:
	:
and	:
	:
SUITABLE TECHNOLOGIES, INC.,	:
	:
Nominal Defendant.	:

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Chancery Courtroom No. 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, December 13, 2019
1:30 p.m.

- - -

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

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RULINGS OF THE COURT ON PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
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1 APPEARANCES:

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11 for Plaintiff

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13 DAVID J. TEKLITS, ESQ.

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18

19 JOHN L. REED, ESQ.

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ApS, Beam Robots ApS, Beam Robots

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NICHOLAS J. ROHRER, ESQ.

MAE OBERSTE, ESQ.

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for Nominal Defendant Suitable

Technologies, Inc.

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1 THE COURT: Welcome back, everyone.
2 Please be seated.

3 I'm going to go ahead and give you an
4 answer now. First let me thank you for the
5 outstanding effort that went into preparing these
6 submissions. You-all got an impressive amount of work
7 done in a very short period of time; not just document
8 discovery, but depositions and expert reports and very
9 thorough briefs, so I'm grateful for all of the sweat
10 that went into preparing the case for decision.

11 We're here today because the
12 plaintiff, Allison Huynh, has applied for a
13 preliminary injunction to block Suitable Technologies
14 from consummating a sale of assets to acquisition
15 subsidiaries controlled by Blue Ocean Robotics ApS.
16 The principal defendant is Scott Hassan. I will warn
17 you-all, and apologize in advance to Mr. Hassan, I
18 have been mentally thinking of his name as "Ha-san,"
19 and so it is entirely possible that I may slip during
20 my ruling, and I do that inadvertently.

21 Mr. Hassan is the controlling
22 stockholder and sole director of Suitable. Ms. Huynh
23 contends that Mr. Hassan breached his fiduciary duties
24 in connection with the sale. The other defendants are

1 Blue Ocean and its acquisition subsidiaries.

2 I find that the plaintiff has
3 established a reasonable likelihood of success on the
4 merits. I also agree that there is a threat of
5 irreparable harm, but I am denying the preliminary
6 injunction based on the balancing of the hardships and
7 the Court's ability to remedy a fiduciary breach after
8 the fact through a remedy that would encompass an
9 award of money damages and, if warranted by the
10 evidence and the arguments, the potential
11 recharacterization or equitable subordination of
12 Mr. Hassan's debt.

13 I'm going to start with some
14 background facts. Suitable is a Delaware company
15 engaged in the robotics business that was founded by
16 Mr. Hassan. Suitable designs, manufactures, and sells
17 mobile telepresence robots. It has two products: the
18 BeamPro for the enterprise market and the Beam for the
19 consumer market.

20 Suitable has approximately 7.7 million
21 shares of common stock outstanding, with 31
22 stockholders of record. Mr. Hassan holds 600,000
23 shares that are community property owned jointly with
24 Ms. Huynh, which represents approximately 7.7 percent

1 of the equity. Mr. Hassan separately controls an
2 additional 50.25 percent of Suitable's stock.

3 As I already noted, Mr. Hassan is
4 Suitable's sole director. He is also the CEO.
5 Suitable has never had a directors meeting. It's
6 never had a stockholder meeting. The evidence
7 reflects that Mr. Hassan views it as his company, as
8 do his employees. He makes the decisions, and he
9 basically does what he wants.

10 From a business standpoint, Suitable
11 has a leadership position in a rapidly growing product
12 market, has valuable intellectual property and a
13 valuable brand. There's considerable debate about the
14 value of Suitable. Ms. Huynh has provided experts who
15 value its assets, including the potential revenue
16 stream from licensing its patents, in the hundreds of
17 millions of dollars. Even taking those valuations
18 with a grain of salt, I think there's good reason to
19 believe that Suitable's asset value approximates or
20 even exceeds \$100 million.

21 To date, however, Suitable has not
22 made a profit. Between 2014 and 2018, its operating
23 losses approximated \$10 million annually. The
24 evidence suggests that one of the issues with the

1 company has been that Mr. Hassan has focused on other
2 ventures. By all accounts, he is a brilliant inventor
3 and successful businessman who has many interests,
4 including in real estate, technology startups,
5 technology companies, and nonprofits. As I said, he
6 has not focused primarily on the company, and that's
7 not an aspersion. It's simply what the record
8 suggests.

9 He has, however, been the sole source
10 of capital for the company since its founding. He has
11 unsecured loans, documented through promissory notes
12 from the company, in a total amount of \$93 million.
13 The parties believe that the current outstanding debt
14 is approximately \$94.5 million.

15 Mr. Hassan's debt position plays a
16 significant role in this case. Net of debt,
17 Suitable's equity value could range from negative to
18 zero to \$10 million to \$100 million-ish, perhaps more.

19 One of the litigable questions that
20 Ms. Huynh has raised is whether those loans should be
21 recharacterized as equity or otherwise equitably
22 subordinated so that they would take pari passu with
23 the equity. That type of remedy would have a
24 significant effect on the value that could be received

1 by the minority investors in any type of liquidation,
2 because rather than the first \$94.5 million in value
3 going to Mr. Hassan, value would be shared among all
4 stockholders pro rata once the trade creditors had
5 been paid off.

6 Mr. Hassan would still get the lion's
7 share, because he starts with 50 percent plus of the
8 equity and there would be some -- it wouldn't be that
9 the debt would be canceled. It would be converted in
10 some fashion; but nevertheless, the minority would
11 effectively take pro rata from dollar one, rather than
12 from dollar 95 million.

13 The path that led to this transaction
14 can be summarized as follows: In late 2018,
15 Mr. Hassan decided that he wanted to wind down
16 Suitable. He no longer wanted to fund the company.
17 He was interested in other ventures that were both
18 more interesting to him and which had pressing needs
19 for capital. He had realized significant capital
20 gains, and by winding down Suitable, he could claim a
21 loss on his loans. That resulting capital loss could
22 be used to offset gains.

23 The evidentiary records provide strong
24 support for the conclusion that Mr. Hassan's actions

1 regarding Suitable were driven by two personal
2 factors: first, and most importantly, his desire to
3 harvest a tax loss; and, second, his desire to focus
4 his energies and resources on other projects. Then,
5 once he began exploring how to wind down the company
6 and considered a sale, a third factor came into play,
7 and that was his desire to see the company's assets
8 end up with someone who would support the brand and
9 the company's customers. Each of those desires was
10 personal to Mr. Hassan.

11 Mr. Bo Preising serves as chief
12 strategy and product officer and SVP of engineering.
13 Mr. Hassan gave him six weeks to find a buyer for the
14 company's assets, although he later extended the
15 runway to three months. This timeline was driven
16 primarily by Mr. Hassan's desire to close a deal in
17 2019 so that he could capture the tax losses for use
18 during that year.

19 Mr. Hassan and Mr. Preising did not
20 hire an investment banker or a business broker. They
21 didn't obtain any valuation or other type of sales
22 advice. From my review of the record, it looks to me
23 like Mr. Preising appears to have done his best, but
24 he's an engineer. He's a tech guy. He's not someone

1 skilled at selling companies. He was able to reach
2 out, using connections that he had from his career and
3 that he had through Mr. Hassan, but generally
4 speaking, this sale process is not one that inspires
5 confidence. It's one that inspires concern.

6 Part of the difficulty, as I suggested
7 earlier, was that Mr. Hassan had idiosyncratic desires
8 about how the buyer could use the company's assets
9 after they were sold. He only wanted to consider
10 buyers who would maintain Suitable's robotics business
11 and support its existing customers. He would not
12 consider buyers who might license Suitable's
13 technology for profit and enforce it against
14 non-licensees, even in those buyers were willing to
15 pay the company more for its assets. And although he
16 later relented on this, one of his goals was to see
17 the company's technology become an open-source
18 platform, even though its technology is potentially
19 its most valuable asset.

20 I will pause to note here that I
21 think, from a general societal perspective or even
22 moral perspective, some of these goals are fairly
23 laudable. For example, in letting the company's
24 technology become open source, Mr. Hassan seems to

1 have been motivated to allow many different people to
2 use it so that people could build the best possible
3 robots that they could. But the difficulty in this
4 situation arises because when he was selling the
5 company's assets, Mr. Hassan had a duty as a fiduciary
6 to attempt to maximize their value for the benefit of
7 the company.

8 In light of the constraints on the
9 process, both as to timing and as to scope, Blue Ocean
10 emerged as the only buyer. Blue Ocean was already a
11 licensee and distributor of the company's products and
12 it was happy to commit to support the business.

13 Discussions moved quickly, and the
14 purchase price eventually was set at \$500,000. I say
15 eventually not because there was negotiation over it,
16 but just because it wasn't set through a bid and ask
17 at the outset. The record suggests to me that no
18 analysis went into this price. Mr. Preising
19 originally floated a number of \$1 million, which looks
20 to me from his email like a plug figure. He seems to
21 have effectively said, "I don't know what this stuff
22 is worth, but what about a million?"

23 Blue Ocean countered at \$500,000.
24 Mr. Hassan accepted. And it was easy for him to

1 accept because, as far as he was concerned, the price
2 didn't matter. The main purpose of the deal was to
3 enable Mr. Hassan to capture the benefits of tax
4 losses.

5 As a side note, the deal price was
6 later reduced to \$400,000 after there was an
7 unfortunate accident at the company that destroyed
8 some of the inventory, evidencing that the price was
9 really not the key determinant from the seller's
10 standpoint. I say that because Mr. Hassan and
11 Mr. Preising tried to be generous in making the
12 \$100,000 deduction. From one standpoint, you could
13 say that that's a matter of good will towards Blue
14 Ocean. But I think it's also consistent with the fact
15 that price didn't really matter as far as they were
16 concerned.

17 The asset purchase agreement they
18 entered into is a fully locked up deal. It didn't
19 include any type of fiduciary out. Since signing,
20 Mr. Hassan and a group of stockholders comprising
21 Suitable employees have executed written consents
22 approving it. Closing is scheduled to take place on
23 or before December 15th, although it's possible that
24 date can be extended. That date is consistent with

1 the goal of closing by year end so that Mr. Hassan
2 could harvest tax losses.

3 To demonstrate the price was unfair
4 and that Mr. Hassan was pursuing this deal for
5 personal reasons, Ms. Huynh organized a group that
6 initially proposed to buy the company's assets for
7 \$600,000, so \$100,000 more than the \$500,000 price.
8 Her group later raised its bid to \$1 million.

9 Those offers were rejected.
10 Mr. Hassan explained that he was concerned that having
11 an offer from a group in which Ms. Huynh was a member
12 might jeopardize his ability to harvest the tax
13 losses. He also believed that Ms. Huynh's group
14 intended to profit by licensing the company's property
15 and enforcing its rights against non-licensees.
16 Finally, he was concerned that after the sale, Huynh's
17 group couldn't support the company's customers. All
18 of these are non-price-based considerations. Huynh
19 filed this action to block the sale.

20 This brings me to the legal analysis.
21 To obtain a preliminary injunction, a plaintiff must
22 demonstrate a reasonable probability of success on the
23 merits at a final hearing, an imminent threat of
24 irreparable injury, and a balancing of the hardships

1 that tips in favor of issuing the requested legal
2 relief.

3 There are a few threshold legal issues
4 that I'd like to touch on. First, I think there's a
5 reasonable likelihood that this Court has jurisdiction
6 over the Blue Ocean parent because it created Delaware
7 acquisition vehicles for purposes of pursuing this
8 transaction. I think there's a reasonable likelihood
9 that Ms. Huynh has standing to sue derivatively, based
10 on her community property interest under California
11 law. I've considered the defendants' cases and
12 believe they are distinguishable. Most importantly,
13 in connection with the hypothetical that was posited
14 this morning, I do think that there's a critical
15 distinction between record ownership and beneficial
16 ownership.

17 One of my favorite cases, *Rosenthal v.*
18 *Burry Biscuit*, was the Chancellor Seitz decision which
19 held that for purposes of a fiduciary duty claim, the
20 issue is equitable ownership, not record ownership.
21 And it seems to me that this is a sufficient situation
22 involving equitable beneficial ownership to permit
23 suit, and that neither of the two cases on which the
24 defendants rely addresses that fact.

1 I also think that there's a reasonable
2 likelihood that, although Ms. Huynh is not an ideal
3 derivative plaintiff, she is an adequate derivative
4 plaintiff. Plaintiff's counsel today spoke in terms
5 of the kingdom of the blind and the one-eyed man being
6 king. This is one of those situations. What you have
7 is a transaction here that is arguably a washout for
8 the company's equity holders, but where, other than
9 Ms. Huynh, there doesn't seem to be anyone well
10 situated to bring this litigation. Most of the
11 stockholders appear to be employees or former
12 employees who are either, therefore, to some degree
13 beholden to Mr. Hassan or otherwise are unlikely to
14 want to file suit.

15 Ms. Huynh is situated to file suit. I
16 personally think the defendants make too much of her
17 prior offers to buy the company. I really view those
18 as tactical gambits. And when you think about it,
19 Ms. Huynh was in something of a no-win situation. If
20 she doesn't make an offer to buy the company, then the
21 defendants can make a much stronger version of the
22 argument that Mr. Reed advanced today, which is that
23 she should be putting up or shutting up; namely, if
24 she really thinks the assets are worth that much, why

1 hasn't she offered to buy them, and the fact that she
2 hasn't made an offer is evidence that she really
3 doesn't have the courage of her convictions.

4 So if she doesn't make that type of
5 offer, she faces that type of argument. It seems to
6 me that by making the offer, she made the tactical
7 decision to defeat that argument and also put
8 Mr. Hassan to the courage of his convictions as to why
9 he rejected it.

10 It seems to me that these are the
11 types of tactical joustings that go on between
12 sophisticated parties. Particularly in this case,
13 which involves a small, privately held company,
14 they're not the type of thing that I think would
15 disqualify her. I think that the Court can ensure
16 adequacy by, among other things, policing settlement
17 and generally overseeing the conduct of the
18 litigation.

19 I'm not ruling on any of these matters
20 definitively today. I know there are motions to
21 dismiss. I told you when we were together for the
22 motion to expedite that I would think about them more
23 deeply and see whether I thought they precluded my
24 ruling on the application. I have done that. I don't

1 think that they impose impediments to the application,
2 nor do I think they're likely to result in dismissal
3 of the case.

4 In terms of the first element of the
5 preliminary injunction standard, Ms. Huynh has
6 established a reasonable probability of success on the
7 merits as to her claim for breach of fiduciary duty.
8 As a controlling stockholder, sole director, and CEO
9 of Suitable, Mr. Hassan owed fiduciary duties to the
10 company for the ultimate benefit of all of its
11 stockholders. Mr. Hassan pursued and entered into an
12 asset sale that serves his interests by conferring
13 unique benefits on him. The evidence is quite strong
14 that he focused on harvesting tax losses and on his
15 personal desire to maintain the company's technology
16 and support its customers.

17 The defendants have made the argument
18 that Delaware presumes that people act rationally and
19 that it would be economically irrational for
20 Mr. Hassan to sacrifice potentially greater sale value
21 to harvest these tax losses. That type of presumption
22 can be overcome by evidence. And here, there is
23 powerful contemporaneous evidence, as well as repeated
24 representations by Mr. Hassan's counsel, as to the

1 reasons for this deal. Not his counsel in this case,
2 but as to his counsel in the broader dispute. And so
3 based on his own words and the words attributable to
4 him, I think it is quite clear that tax losses were
5 driving this transaction.

6 When a company is winding down, as
7 this one is, there is no tomorrow for stockholders.
8 You're therefore obligated to maximize value. It
9 doesn't matter what standard of review is applied.
10 That is what a fiduciary, where the company has no
11 tomorrow, has to do. It's a standard of conduct. If
12 you want to actually see that standard applied in a
13 wind-down situation, you can look to *Robinson v.*
14 *Pittsburgh Oil*, which was the case on which *Revlon*
15 ultimately was based.

16 In this case, for purposes of the
17 standard of review, as a self-interested controller,
18 Mr. Hassan will have to establish the transaction is
19 entirely fair as to process and as to price. And I
20 think there's a reasonable likelihood that he won't be
21 able to show that. Certainly as to process, it was
22 constrained both in timing and as to scope. There
23 were no professional advisors and no valuation
24 information. There were constraints imposed by

1 Mr. Hassan's personal requirements for bidding, and
2 there was really a lack of involvement and oversight
3 by Mr. Hassan himself.

4 One of the things that comes through
5 from the record is that Mr. Preising a lot of times
6 couldn't even get in touch with Mr. Hassan and
7 couldn't get timely decisions. And it's because Mr.
8 Hassan's attention was elsewhere. I don't fault him
9 for that from a grand scheme of things. He's entitled
10 to prioritize where he spends his time, and he may
11 well have had better things to do with his time. But
12 for purposes of this case, it feeds into the fair
13 dealing analysis.

14 It is also, I think, reasonably likely
15 that Mr. Hassan won't be able to show fair price. The
16 500,000 -- now \$400,000 -- appears to have been
17 arbitrary. The evidence and expert testimony supports
18 a higher valuation for the assets. And you have to
19 remember that this transaction is styled as a sale of
20 assets, so really what we're looking at is what the
21 company is selling and what the company is getting
22 back.

23 From the company's perspective,
24 Mr. Hassan's position as a creditor in the capital

1 stack doesn't mean he gets to sacrifice value for the
2 company. That's a capital-stack-level concern that
3 means that it's unlikely that anything would flow
4 through to the equity unless the value achieved is
5 greater than \$94 million. But it doesn't change the
6 fact that juridical person involved in the sale --
7 namely, the company -- is selling assets worth
8 millions of dollars for an arbitrary price of
9 \$400,000.

10 The formal analysis focuses on the
11 fact that this is a corporate-level transaction. But
12 I'm willing to look through the corporation and
13 consider Mr. Hassan's position as the creditor. Even
14 if he foreclosed on his notes and put the company into
15 Chapter or sought some type of receivership, he
16 doesn't just get to do what he wants. He has to
17 pursue an orderly sale, in case there's residual value
18 that exceeds the value of his claim. And here, at
19 least, there's good reason to think that in an orderly
20 sale that was not driven by the idiosyncratic
21 interests of Mr. Hassan, much more value could have
22 been recognized, and possibly value in excess of the
23 debt.

24 Furthermore, I do think there is

1 reason to think that these notes were functionally
2 equity. This is, as plaintiff's counsel suggested in
3 their papers, a startup company, very thinly
4 capitalized, funded by unsecured debt, in interested
5 transactions. There are good reasons why people
6 structure investments as debt, precisely so that they
7 can get priority. But that doesn't mean that a court
8 of equity will always treat the debt as debt.

9 On this point, I've had this issue
10 come up before. I've never had to actually rule on
11 it, but I don't see any reason why a court of equity
12 that happens to be the Delaware Court of Chancery
13 couldn't exercise equitable powers in the same way
14 that a court of equity that happens to be a bankruptcy
15 court exercises equitable powers. The bankruptcy
16 court is, first and foremost, a court of equity. It
17 certainly has statutory authority to do some things,
18 but a lot of what is codified the Bankruptcy Code is
19 traditional equitable powers relating to insolvency
20 proceedings and receivership proceedings.

21 I don't see a major impediment to that
22 as a remedy. Of course, it would have to be proven
23 up. But as I said at the outset, if the notes do get
24 recharacterized or equitably subordinated, this

1 becomes a very different case.

2 Additionally, as to valuation, I do
3 not think that Ms. Huynh is bound by her stipulation
4 under the divorce case as to the value of Suitable's
5 equity. I read that stipulation and it clearly says
6 that it was solely for purposes of the divorce case
7 and not usable in any other proceeding.

8 This case also is not one that
9 Ms. Huynh is bringing in her personal capacity. She
10 is suing derivatively on behalf of the company.
11 Effectively, on behalf of the company, she's looking
12 out for all stockholders; as a practical matter,
13 mainly the minority stockholders. I don't view that
14 as anything that precludes a different outcome in this
15 proceeding.

16 Lastly, there is the vote from
17 Mr. Hassan and his colleagues, and the defendants
18 posited that the votes of his colleagues delivered a
19 majority of the minority. It seems to me that it's
20 unlikely that they would be included in the minority.
21 The minority is supposed to be a disinterested
22 minority. And although I'm reading tea leaves because
23 nobody really seems to come out and say who these
24 people were, they seem to have been executives of the

1 company who are beholden to Mr. Hassan.

2 Taking all this into account, I think
3 there's good reason to think that this deal was not
4 entirely fair. Stated more appropriately for the
5 injunction setting, there is a reasonable likelihood
6 that Mr. Hassan will not be able to prove at trial
7 that the deal was entirely fair. And to further make
8 sure that I am allocating the burden in my statements
9 so that no one is confused, the plaintiffs have
10 established a reasonable likelihood that Mr. Hassan
11 will not be able to show at trial that the transaction
12 was entirely fair.

13 The plaintiffs have made other
14 arguments involving Mr. Hassan. Because of my holding
15 or views on this, I don't reach them.

16 I will say I think it's a close call
17 as to whether Ms. Huynh has established a
18 reasonability probability of success on the merits as
19 to her claim for aiding and abetting. I've read the
20 emails back and forth between Mr. Preising and the
21 Blue Ocean gentleman. Preising is quite candid and
22 clear as to the idiosyncratic reasons that are driving
23 the deal and Mr. Hassan's personal interests in the
24 outcome. And it does look to me like Blue Ocean

1 caters to and responds to those interests, but it's
2 doing so in response to parameters that the sell side
3 is setting.

4 It's sufficiently ambiguous that I
5 think the claim would likely survive a motion to
6 dismiss, but for purposes of injunctive relief, it
7 does not fill me with conviction that there's a
8 reasonable likelihood of success on that. And I've
9 taken that into account in terms of the outcome.

10 Next, the question is irreparable
11 harm. I do think Ms. Huynh has established a
12 reasonable probability that there will be some
13 irreparable harm. Given the nature of the company's
14 business and its assets, any after-the-fact damages
15 remedy would be less accurate than a before-the-fact
16 marketing process.

17 But I do think that because of the
18 structure of this transaction, involving a controlling
19 stockholder who can pay a damages award, and the
20 Court's ability to craft an award that could
21 potentially include not only damages, but also
22 possibly other equitable dimensions, such as a
23 recharacterization or equitable subordination of debt,
24 the risk of irreparable harm is limited.

1 I think there's irreparable harm here
2 that would be sufficient to support a preliminary
3 injunction if I were inclined to go in that direction.
4 But I don't think there is such an overwhelming sense
5 of irreparable harm, as with a vote or something like
6 that, where it really cries out for some type of
7 injunctive relief.

8 This brings me to the balance of
9 hardships, and it's this element that causes me to
10 deny the injunction. As I just discussed, I do think
11 there's a viable post-closing remedy here in the form
12 of some combination of damages and equitable relief;
13 again, assuming everything is proven. I also do take
14 into account that Blue Ocean is a third party. I
15 think that the claim of aiding and abetting is
16 reasonably conceivable, but based on the deeper dive
17 that I've taken into the record, I don't think it's
18 strong. An injunctive would jeopardize the contract
19 rights that Blue Ocean has secured.

20 I also think that if I entered an
21 injunction, the premise would be that it would be to
22 let a marketing process go forward that would value
23 the company. But given the nature of the company and
24 the fact that there would already have been an

1 enjoined transaction, plus the overhang of the
2 controller's conduct, I'm not sure that a sale process
3 would be effective.

4 Finally, I do have some concern about
5 the overall posture of this litigation. The
6 derivative plaintiff and the lead defendant are in a
7 divorce proceeding out in California. It strikes me
8 that because they are sophisticated people, aided by
9 sophisticated counsel, they are probably playing
10 three-dimensional chess, and that I am not fully aware
11 of all the pressure points between them.

12 It wouldn't surprise me if the deal
13 itself had dimensions that were helpful to Mr. Hassan
14 and potentially created leverage against Ms. Huynh.
15 It wouldn't surprise me if this proceeding had some
16 overtones of potentially being helpful to Ms. Huynh
17 and creating leverage against Mr. Hassan. It seems to
18 me that an injunction would potentially change the
19 leverage in ways that I am not sure that I fully
20 understand.

21 By contrast, denying the injunction,
22 with the possibility of some later equitable remedy --
23 be it damages or damages plus something else -- I
24 think comes closer to maintaining the status quo

1 between the parties. It clearly doesn't fully
2 maintain the status quo, it allows the transaction to
3 proceed. But having thought about it, I am more
4 comfortable with this outcome than I am with the
5 possibility of injunctive relief.

6 Lastly, I'm not willing to take on a
7 future sale of the patents. If Mr. Hassan exercises
8 the put, then the patent transfer becomes part of this
9 transaction. In any ultimate truing up, in terms of
10 entire fairness and also in terms of remedy, part of
11 what one would deal with then is the transfer of the
12 patents.

13 If one suspects, as I do, that the
14 transaction currently is lopsided, the transfer of the
15 patents would make it more lopsided, so there would be
16 more of a remedy. I'm certainly happy to be shown
17 otherwise, but for purposes of today, that's my
18 inclination. If things proceed down that track,
19 that's how it will be addressed.

20 Now, if Mr. Hassan follows a different
21 course and sells the patents in some other manner,
22 then that's a different transaction and we would have
23 to -- "we," all of us. I don't know whether it would
24 be me or someone else, but there would be a need to

1 grapple with that alternative transaction.

2 I know that the plaintiff's side of
3 the fence is skeptical, but imagine, for example, that
4 Mr. Hassan decides that, having been through the joy
5 of this proceeding, it is worth it to him to hire a
6 reputable firm to market and sell the patents to the
7 highest bidder, no matter what, without any
8 constraints about how they use them in their business.
9 If that sale process was bona fide, I would be
10 hard-pressed to think that there would be a problem.
11 As a result, it seems to me to be premature and
12 speculative to do anything right now to address the
13 patents.

14 I appreciate you listening through
15 that lengthy ruling. I finish where I started. I am
16 denying the injunction based on the balancing of the
17 hardships.

18 I am not finding the transaction was
19 fair. I know there's been some discussion about
20 whether this Court's approval could be deemed to
21 satisfy the condition. My ruling is not intended to
22 satisfy that condition. In fact, I think there's a
23 reasonable likelihood to think that the transaction is
24 not fair.

1 I do want to return to thank you for
2 your preparation and your presentations and being
3 direct and concise today; probably more so than I was
4 in my ruling.

5 With that, let me first ask the
6 plaintiffs if there's anything I need to clarify or
7 any questions that I can answer for you-all.

8 MR. O'DONNELL: I do have one point,
9 Your Honor. I understand your ruling, and I can't
10 thank you enough for all the effort you've put in in
11 such a short period of time.

12 And I may be in error, but I'm not in
13 doubt about one thing. The loss of these patents, I
14 believe, just the patents -- I understand the robots
15 and the manufacturing equipment and the arms and the
16 levers and the screen and the brand, okay? And I'll
17 say right now, if that had been the outcome of this
18 case, I think Blue Ocean is entitled, as a third
19 party, to get what they wanted. They don't want the
20 patents, they say. Now, you know I have my doubts
21 about that based on the record.

22 But once these patents pass through
23 the portal of the put, if you will, okay, in the land
24 of -- I don't know if it's hobbit -- where they're

1 going, to hobbit or whatever, they're gone. And I'm
2 going to be here, because we're going to be here
3 arguing was Cronin right, was he right, she right,
4 Pellegrino right. And that's difficult. I've given
5 you quite a bit of law on the difficulty of that.

6 So if I'm allowed, after all the work
7 you've done, to ask you to consider one thing. It
8 would be to enjoin the put, just the put. I lose the
9 patents, they're gone, and I'm going to have a battle
10 of experts royal in this courthouse some day.

11 Mr. Hassan was right; you've seized
12 upon it. If you enjoin the put and any other
13 transaction, nobody gets hurt. They get their new
14 Beam company and the assets and the robots and they
15 can call the new ones the Beam. Mr. Hassan, if the
16 IRS allows, can walk away into the night with a
17 \$94 million tax deduction and whatever, the
18 \$30 million, okay?

19 But the only asset that's really worth
20 anything substantially is the patents, and I would
21 urge the Court to re -- I'm going to use the word
22 reconsider that issue, with all due respect, and I
23 mean that, to reconsider that.

24 I -- these are really good lawyers,

1 and I don't mind -- I like being with them, and I've
2 try a case with them years ago here before Vice
3 Chancellor Lamb. And I love this courthouse, I really
4 do, and I do want to be back again. But not in a
5 damages suit.

6 And I would urge Your Honor to
7 consider that, okay, that the put not be exercised.
8 It's inequitable -- it is an equitable outcome. And
9 on that issue, I respectfully submit, the equities
10 decidedly tip in favor of the shareholders, because
11 there is no tomorrow for those patents. And I urge
12 you to reconsider that one point, Your Honor. I
13 really do.

14 Thank you.

15 THE COURT: All right. Thank you. I
16 appreciate that. You were very eloquent in making
17 that appeal. But this is an issue that I did think
18 about in terms of my earlier ruling, and I did
19 understand those issues as they were presented at the
20 time, and so I'm going to stand by my ruling from the
21 first time around.

22 Anything from the defense side, in
23 terms of questions?

24 MR. TEKLITS: No questions, Your

1 Honor.

2 THE COURT: Mr. Reed, anything for
3 you?

4 MR. REED: Nothing, Your Honor.

5 THE COURT: All right. Well, thank
6 you all for being here today, and in particular thank
7 you to the folks who came in from out of town.

8 And it may just be you. Are you the
9 only one? No. Oh, you have an out-of-towner?

10 MR. REED: Mr. Priebe already escaped,
11 Your Honor.

12 THE COURT: There we go. Okay. Well,
13 anyway, I wish you-all safe travels back, and
14 certainly the same for the Delawareans; you just don't
15 have to go as far.

16 Everyone have a good rest of the day.

17 (Court adjourned at 3:40 p.m.)

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CERTIFICATE

I, JULIANNE LABADIA, Official Court Reporter for the Court of Chancery for the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 31 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except as revised by the Vice Chancellor.

IN WITNESS WHEREOF I hereunto set my hand at Wilmington, this 14th day of December, 2019.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public