Morris James Successfully Defends Directors and Chief Executive Officer Against Removal Attempt

When a dispute arises over an attempt to remove directors and officers, the Delaware Court of Chancery can decide the matter promptly. Morris James’ attorneys are experienced in efficiently resolving such disputes, providing certainty to directors and other stakeholders.

In *Schroeder v. Buhannic*, Del. Ch. C.A. No. 2017-0746-JTL, 2018 WL 376385 (Jan. 10, 2018), Morris James represented certain directors of TradingScreen Inc. (the “Company”) whom common stockholders purported to remove via written consent. Among other things, the stockholders purported to remove the Company’s Chief Executive Officer from that position and from the board of directors and appoint a new CEO in his place. In response, Morris James brought suit and obtained an expedited adjudication that the removal attempt was invalid in light of the Company’s governing documents, including its certificate of incorporation, bylaws, and a Stockholders Agreement binding all of the Company’s stockholders.

The stockholders making the removal attempt pointed to language in the Stockholders Agreement providing that stockholders could designate certain directors for election, “one of whom shall be the Chief Executive Officer” of the Company. They claimed this entitled them to choose the CEO. Morris James’ clients argued, by contrast, that this language required the stockholders to maintain the incumbent CEO as a director. The Court of Chancery reasoned that, when “[r]ead in isolation,” both sides’ competing interpretations were reasonable. The Court continued to reason, however, that the common stockholders’ reading was inconsistent with the Company’s other governing documents. As is common, the bylaws provided that the board of directors had sole authority to hire and fire officers. This comports with bedrock Delaware law, which recognizes that appointing, monitoring and replacing a company’s chief executive are among directors’ most important responsibilities. The Court also agreed with Morris James’ clients that, under the Delaware General Corporation Law (“DGCL”), appointing the CEO is “a core board function that only can be limited in the certificate of incorporation (pursuant to Section 141(a) of the DGCL) or bylaws (pursuant to Section 142(b) of the DGCL).” The Court read the Stockholders Agreement in harmony with these core tenets, and reasoned that any attempt to restrict the board’s authority to remove and replace the CEO via such an agreement would be invalid under Delaware law. The Court accordingly entered judgment in favor of Morris James’ clients.

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