

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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|--------------------------|---------------------|
| LOUIS GESER,             | :                   |
|                          | :                   |
| Plaintiff,               | :                   |
|                          | :                   |
| v                        | :                   |
|                          | : Civil Action      |
|                          | : No. 2019-0764-AGB |
| ROCKY MOUNTAIN CHOCOLATE | :                   |
| FACTORY, INC.,           | :                   |
|                          | :                   |
| Defendant.               | :                   |

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Chancery Courtroom No. 12A  
Leonard L. Williams Justice Center  
500 North King Street  
Wilmington, Delaware  
Friday, November 1, 2019  
11:05 a.m.  
- - -

BEFORE: HON. ANDRE G. BOUCHARD, Chancellor.

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ORAL ARGUMENT AND RULINGS OF THE COURT ON PLAINTIFF'S  
MOTION FOR JUDGMENT ON THE PLEADINGS OR,  
ALTERNATIVELY, SUMMARY JUDGMENT and DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

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CHANCERY COURT REPORTERS  
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1 APPEARANCES:

2 CARMELLA P. KEENER, ESQ.  
Rosenthal, Monhait & Goddess, P.A.

3 -and-

4 JOSHUA W. RUTHIZER, ESQ.  
of the New York Bar  
Wolf Popper LLP  
5 for Plaintiff

6 J. MATTHEW BELGER, ESQ.  
PETER J. WALSH, JR., ESQ.  
7 JACQUELINE A. ROGERS, ESQ.  
NICHOLAS S. PRUST, ESQ.  
8 Potter, Anderson & Corroon LLP  
for Defendant

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1 THE COURT: I do not. Thank you.

2 MR. RUTHIZER: Thank you, Your Honor.

3 THE COURT: All right. I'm going to  
4 give you my ruling now. Thank you for the arguments.  
5 There were more than ample papers given the nature of  
6 the issues that are on the table here.

7 What's before me today are two  
8 cross-motions. The motion by the plaintiff is a  
9 motion for judgment on the pleadings or, in the  
10 alternative, a motion for summary judgment. The  
11 defendant's cross-motion is one for summary judgment.

12 I'm going to grant and deny in part  
13 each of those motions. I think it will be obvious in  
14 my ruling the bases for the grants and denials of each  
15 motion or, in other words, which piece of each motion  
16 is being granted or denied.

17 The bottom line is I'm not going to  
18 disturb the meeting date that the company has set for  
19 January 9, 2020 or the record date that's set for  
20 November 22nd, 2019. If I'm erroneous on those dates,  
21 you can straighten that out in the implementing order,  
22 but that's my understanding of those dates. I'm not  
23 going to require that the meeting be moved up to an  
24 earlier point in time, namely, December 2nd, 2019, as

1 the plaintiff is seeking. But I am going to require  
2 that there be an implementing order that will set  
3 forth that those will be the dates.

4           Specifically, the order should provide  
5 the date of the annual meeting and the date of the  
6 record date.

7           Second, it will need to contain a  
8 provision addressing quorum. I will just dictate to  
9 you what it should say so you have it, which is a  
10 paragraph that should say: "Pursuant to 8 Del. Code  
11 Section 211(c), shares of stock represented at the  
12 Annual Meeting, either in person or by proxy, and  
13 entitled to vote thereat, shall constitute a quorum  
14 for the purpose of such meeting, notwithstanding any  
15 provision of the certificate of incorporation or  
16 bylaws of the company to the contrary."

17           Third, the order should provide that  
18 there can be no change of the annual meeting date or  
19 the record date without further order of the Court.  
20 This will lock in the plan the company has announced  
21 for conducting this meeting.

22           So let me make a couple of comments on  
23 my reason for doing this. With respect to the  
24 selection of the meeting date, the January 9th date is

1 well within a 60- to 90-day window that this Court  
2 commonly uses. That's the typical window from the  
3 date of the implementing order for setting these kind  
4 of meetings.

5 I also think there are practical  
6 issues, candidly, with moving up the meeting that make  
7 it ill-advised and unnecessary in this circumstance,  
8 in any event, not the least of which is that there a  
9 lot of holidays that appear in the December time  
10 frame. Frankly, stockholders would be better off  
11 having an annual meeting date that's clear of the  
12 holidays.

13 In terms of the reason for requiring  
14 an order, I want to be very clear. This is something  
15 that is -- and I appreciate counsel acknowledging this  
16 from the defendant's side -- within the Court's  
17 discretion. I didn't see in the papers a very  
18 compelling reason for why the company felt a need to  
19 deviate from its rather significant track record of at  
20 least four years, where it determined in the May time  
21 frame of a given year when it's going to hold its  
22 meeting, typically issued its proxy in the June time  
23 frame, and then had the meeting in the August time  
24 frame. That's not a terribly difficult thing to do.

1 Companies are busy, do lots of things but, frankly,  
2 that's a schedule that could have easily been followed  
3 here. There, obviously, may have been a strategic  
4 decision to do it differently this year, and I have no  
5 doubt part of that strategy was influenced by the fact  
6 that the company received a notice of a slate that's  
7 being proposed for two of the five board seats.

8           So I think it's only appropriate to  
9 reflect in an order that the meeting will be held on  
10 the schedule that's now been set by the company, to  
11 prevent any mischief in trying to deviate from that  
12 schedule. That's the reason I'm going to require that  
13 the order be put in place.

14           It's fairly early in the day. So if  
15 you can get back to me with an implementing order by  
16 the end of the day, that would be best. For what it's  
17 worth, the language I dictated to you I used in  
18 another case, Civil Action 2018-0002, called the  
19 *Digirad* case. So if you need the language before you  
20 get the transcript, you can find it from there.

21           Does anybody have any questions for  
22 me?

23           MR. BELGER: No, Your Honor. Thank  
24 you.

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THE COURT: All right.

MR. RUTHIZER: No, Your Honor. Thank  
you very much.

THE COURT: Okay. Thank you. Have a  
good day.

MR. WALSH: Thank you.

MS. KEENER: Thank you.

(Court adjourned at 11:28 a.m.)

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