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Delaware Supreme Court Affirms Quickturn

On December 31, 1998 in Quickturn Design Systems, Inc. v. Shapiro, Del. Supr. No. 511, 1998 (Dec. 31, 1998) the Delaware Supreme Court affirmed the decision of the Court of Chancery handed down earlier that month in Mentor Graphics Corp. v. Quickturn Design Systems, Inc., C.A. Nos. 16584 and 16588, Del. Ch. (Dec. 2, 1998)(see our memorandum dated December 3, 1998) invalidating the delayed redemption provision of a poison pill. The delayed redemption feature made it impossible for newly elected directors to redeem rights issued under Quickturn's shareholder rights plan for six months after taking office if the redemption would facilitate a transaction with a person who supported their election. The Supreme Court's decision goes farther than the decision in the Court below. The Chancery Court found that the directors of Quickturn breached their fiduciary duties in approving the delayed redemption provision. The Supreme Court found the provision invalid as a matter of law. Citing Section 141(a) of the Delaware General Corporation Law, the Court held that the delayed redemption provision impermissibly circumscribed the "full" power of a new board of directors to manage the business and affairs of the corporation as provided in that section. While the Supreme Court painted with a broad brush, its discussion of Moran V. Household International, Inc., Del. Supr. 500 A.2d 1346 (1985), where the Court first approved a shareholder rights plan, suggests that the continuing power of a board of directors that the Court sought to preserve for sitting directors was the power to make such fundamental decisions as whether the corporation should be sold.

The Supreme Court's decision in Quickturn brings full circle the Delaware courts' recent consideration of efforts by incumbent directors to limit redemption of rights issued under a shareholder rights plan in the face of a proxy contest. In Carmody v. Toll Brothers Inc., Del. Ch., C.A. No. 15983 (July 24, 1998)(see our memorandum dated July 28, 1998) the Court of Chancery refused to dismiss a challenge to a "dead hand" poison pill. In Quickturn the Supreme Court indicated its approval of Toll Brothers, citing the same statutory provision.

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