



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE McDONALD’S CORPORATION)
STOCKHOLDER DERIVATIVE) C.A. No. 2021-0324-JTL
LITIGATION)

ORDER GRANTING DISMISSAL UNDER RULE 23.1

1. Defendant David O. Fairhurst served as the Global Chief People Officer of McDonald’s Corporation (the “Company”) from 2015 until his termination without cause in 2019. The plaintiffs sued Fairhurst derivatively on behalf of the Company. This court issued a decision holding that the complaint stated a claim against Fairhurst on which relief can be granted. Dkt. 87.

2. The plaintiffs did not make demand on the Company’s board of directors. Accordingly, the claim against Fairhurst remains subject to dismissal unless the plaintiffs can plead demand futility under the standard articulated in *United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg*, 262 A.3d 1034 (Del. 2021)

3. The plaintiffs asserted that demand was futile because nine members of the board of directors (the “Director Defendants”) faced a substantial risk of liability for the claims that the plaintiffs asserted against them, and those claims were so intertwined with the claim against Fairhurst that the Director Defendants could not act in a disinterested manner with respect to a demand. That road to establishing demand futility is theoretically open. *E.g., Pfeiffer v. Toll*, 989 A.2d 683, 690 (Del. Ch. 2010) (finding demand futile because claims were intertwined with issues in federal securities action where the complaint had survived a motion to dismiss and the directors were named as defendants),

abrogated on other grounds by Kahn v. Kolberg Kravis Roberts & Co., L.P., 23 A.3d 831 (Del. 2011).

4. This court has now held that the complaint fails to state a claim on which relief could be granted against the Director Defendants. Dkt. 89. For purposes of this case, the road to establishing demand futility that the plaintiffs sought to travel is closed.

5. The claim against Fairhurst that survived a motion to dismiss under Rule 12(b)(6) is dismissed for failure to plead demand futility. In accordance with Rule 15(aaa), the dismissal is with prejudice as to the named plaintiffs only.

6. This order disposes of the case and represents the court's final order and judgment.

/s/ J. Travis Laster
Vice Chancellor Laster
March 1, 2023