## DELMAN V. GIGACQUISITIONS3, LLC

SUMMARY AUTHORED BY ALYSSA ATKISSON

C.A. No. 2021-0679-LWW

*Court of Chancery of the State of Delaware*

January 4, 2023

**Key Takeaway**: *Delaware Courts will apply longstanding principles of fiduciary duties to SPACs and may apply entire fairness review to enforce those obligations.*

In *Gig3*, the named plaintiff-stockholder, Richard Delman, filed a putative class action on behalf of himself and other current and former GigAcquisitions3 ("Gig3") stockholders. The complaint alleged that the Gig3 board of directors and controlling stockholders breached their fiduciary duties of loyalty and care by depriving "stockholders of information needed to decide whether to exercise their redemption rights." Gig3, formed as a SPAC in February 2020, moved to dismiss the complaint citing Court of Chancery Rules 23.1 and 12(b)(6), for failure to plead demand futility for derivative claims and failure to state grounds for relief, respectively. Vice Chancellor Will, focusing on Gig3's 12(b)(6) claim, denied the motion, declaring it "reasonably conceivable" that Gig3's conduct breached its fiduciary duties to the public stockholders.

Under Rule 12(b)(6):

> (i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are well-pleaded if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and [(iv)] dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.

Thus, in order to survive such a motion, the plaintiff must demonstrate "reasonable conceivability" that a defendant breached its fiduciary duty. The fiduciary duties of loyalty and care to stockholders include a director's duty to disclose, as well as a controlling stockholder's duty to refrain from self-serving conduct disadvantageous to the corporation. Further, fiduciaries must "fully and fairly" disclose all material information "reasonably available about [a] merger." The entire fairness standard is applied when the defendant's conduct refutes the presumption of good faith. Thus, the defendant loses the deference protections of the business judgment rule and is required "to demonstrate that the challenged act or transaction was entirely fair to the corporation and its [stockholders]." The Court is required to consider both the price and process components when rendering its judgment of overall fairness.

Gig3 allegedly engaged in a value-decreasing merger transaction, creating great returns for the Sponsor—the controlling stockholder—without consideration for the *public* stockholders. Further, Delman alleges that the public stockholders were provided inadequate disclosures about the transaction to discourage exercising their redemption rights. The Court applied entire fairness because of the "inherent conflicts between the SPAC's fiduciaries and public stockholders in the context of a value-decreasing transaction." In conducting its analysis, the Court relied on facts provided by Delman to demonstrate that redemption decisions were "compromised" because Gig3 failed to disclose its net cash per share of the merger and omitted the value public stockholders would receive. These reasonably available, and essential, pieces of information impacted the stockholders' ability to decide whether to invest stock in the merger or redeem funds. Accordingly, their redemption decision was unfairly influenced because of the proxy's "material misstatements and omitted material."

Vice Chancellor Will denied Gig3's 12(b)(6) motion to dismiss, finding it reasonably conceivable that Gig3's conduct breached its fiduciary duties required by the "long-established principles of Delaware law" when it "disloyally deprived" stockholders of information critical to deciding whether to exercise redemption rights. Gig3 will bear "the burden of persuasion" under the entire fairness standard at trial.