A Comparative Study of Fiduciary Duty Examination Systems in Corporate Decision-Making

-- Based on the Tesla Shareholders Litigation and similar cases in China

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Abstract: In recent years, China has witnessed a surge in corporate governance irregularities both internally and externally. Terms like "financial scandals" have frequently trended, drawing high attention from the general public and causing significant damage to China's financing environment. Even though there are complex regulations in place, there are still speculators who, under the guise of legal decision-making processes, act dishonestly, making it difficult to prevent. Perhaps we should consider introducing a fiduciary duty system and learning from the legal systems of the United States and the United Kingdom to protect the interests of small and minority shareholders. In the state of Delaware, often referred to as the world's corporate capital, a shareholder lawsuit involving "the world's richest person," Elon Musk, and his proudest Tesla company unfolded in the Delaware Chancery Court. It immediately attracted the attention of business owners, investors, and corporate legal scholars from across the United States and the world. Since Tesla officially announced the acquisition of Musk's affiliated enterprise in 2016, SolarCity, founded by his cousins, a protracted legal battle initiated by a substantial group of plaintiffs lasted for over five years, finally coming to an end in early 2022 with Musk's victory. This enduring lawsuit, centered around whether Musk violated his fiduciary duties to minority shareholders under Delaware corporate law, with its lengthy process, complex evidence, and the judge's astute rulings, has provided us with insights into the examination logic and techniques applied by top-tier corporate law regarding fiduciary duties. This holds significant guiding significance for the subsequent amendments and practices of China's Company Law.

Keywords: Company Acquisition; Company Law; Controlling Stockholder; Fiduciary Duty.

1. Preface

Paragraph 1 of Article 21 of China's Company Law stipulates that "Neither the controlling shareholder, nor the actual controller, nor any of the directors, supervisors or senior management of the company may injure the interests of the company by taking advantage of its connection relationship"; and Paragraph 1 of Article 147 stipulates that "The directors, supervisors and senior managers shall comply with the laws, administrative regulations, and bylaw. They shall bear the obligations of fidelity and diligence to the company", "the obligations of fidelity and diligence", in China's company law are imported, originated from the common law of the "Fiduciary duty".

The United States, as the world's largest economy, has a long history of guiding significance to the development of company law in China, and as the saying goes, "It is good to rub and polish one’s brain against that of others". Coinciding with the "world's richest man" Elon Musk's (hereinafter referred to as "Elon") deep-rooted fiduciary duty lawsuit, In re Tesla Motors, Inc. Stockholder Litigation ushered in the final, we may wish to start from this high-profile case, a glimpse of the U.S. company law under the fiduciary duty review mechanism, for the improvement of China's company law and the establishment of fiduciary duty review system to provide reference.

2. Background: Timeline of In re Tesla Motors, Inc. Stockholder Litigation

2.1. 2016 - Tesla publicly announces acquisition of SolarCity

Tesla Inc. (then Tesla Motor Inc.) was founded in 2003 with a focus on electric vehicles. The year after its founding, Elon Musk, the defendant in this case, joined as a Series A investor and became the Chairman of the Board of Directors. [1]

SolarCity Inc. was co-founded in 2006 by Musk's cousins, Lyndon Reeve and Peter Reeve, with a focus on solar panels. Musk initially invested in the company and later became its chairman. [2]

On June 21, 2016, Tesla announced its intention to acquire SolarCity for approximately $2.6 billion. The move was controversial, with some investors and analysts questioning SolarCity's financial viability and its relationship with Tesla. On the day of the deal, Tesla's stock closed at $196.66, a 10.45% drop from the previous day's offer of $219.61. Despite the controversies, the acquisition was ultimately approved by shareholders and closed in November 2016; these controversies also set the stage for future litigation.

2.2. 2017 - Tesla Minority Shareholders File Class Action and Derivative Lawsuits

In 2017, several Tesla minority shareholders filed a lawsuit in the Delaware Court of Chancery alleging that the Tesla Board of Directors breached their fiduciary duties in Tesla's acquisition of SolarCity, and the Court consolidated such cases into one, the collectively known as In re Tesla Motors,
Plaintiffs allege that the acquisition is not in the best interests of Tesla and its shareholders, and that Tesla's board of directors is in conflict due to its relationship with SolarCity. Specifically, Plaintiffs allege that Musk, Tesla's controlling shareholder, is also the Chairman of SolarCity and has a significant financial interest in the success of the Acquisition, and assert that the failure of Tesla's Board of Directors to thoroughly analyze the proposed Acquisition and disclose to Tesla's shareholders all material information related to the Acquisition resulted in Tesla acquiring SolarCity at a "grossly unfair price," and that this acquisition resulted in Elon and his shareholders acquiring SolarCity at "grossly unfair prices." "SolarCity, and that the acquisition benefited Elon and several members of the Board of Directors that breached their fiduciary duties to Tesla.

2.3. 2018 - Plaintiffs' Partial Motion Denied

In 2018, plaintiffs moved for summary judgment in the Delaware Court of Chancery. Defendants argued that Plaintiffs' evidence was insufficient to establish that Elon was in a "completely dominant" position in the acquisition and that a less stringent standard of review, the business judgment standard, should apply; Plaintiffs argued that the majority of Tesla's directors had a conflict of interest in the SolarCity acquisition and that the business judgment standard should not apply in favor of Defendants. The plaintiffs argued that the majority of Tesla's directors had a conflict of interest in the SolarCity acquisition, so the business judgment standard could not be applied in favor of the defendants, and the extremely stringent full fairness standard of review should be applied.

Finding that the parties' factual disputes in the case were still in dispute and that summary judgment could not be granted under the prretial system, the court denied the parties' request for a full trial (as to findings of fact and application of law).

2.4. April 27, 2022 - Musk walks away with the litigation

2022 In a full trial and an extremely demanding full fairness review, Presiding Judge Slights meticulously reviewed the facts asserted and evidence presented by Plaintiffs and ultimately found that Plaintiffs' evidence was insufficient to prove that Elon acted with authority or wasted company property in acquiring SolarCity, which meant that Tesla's acquisition of SolarCity was Delaware corporate law is entirely fair.

3. Proceedings: Points at Issue and Judgment

In this case, Plaintiffs, a group of minority shareholders of Tesla, Inc. in Delaware, brought claims in the Delaware Court of Chancery that (1) Elon, by controlling Tesla's acquisition of SolarCity, improperly benefited himself; his loved ones, and directors on Tesla's Board of Directors who have affiliations with SolarCity; (2) Elon, by controlling Tesla's acquisition of SolarCity, provided financial relief to SolarCity, which was founded by his cousins, and which is at liquidity risk; and (3) Elon improperly wasted corporate property by controlling Tesla's acquisition of SolarCity. SolarCity, which was founded by his cousins and was facing liquidity risks, as well as to preserve his "ego"; and (3) through his control of Tesla's acquisition of SolarCity, Elon improperly squandered the Company's property.

Summary judgment is a summary judgment entered by a court against one party against another party without a full trial. It is usually applied to cases where there are no disputed, genuine issues of material fact that need to be resolved at trial, and where the legal relationship is simple. Accordingly, Plaintiffs make four allegations, which are (1) that Elon, as a major Tesla, Inc. shareholders, breached his fiduciary duty to the Company; (2) Elon, as Chairman of the Company, breached his fiduciary duty to the Company; (3) Elon, through his domination of Tesla, Inc. improperly benefited himself and his family (unjust enrichment); and (4) Elon wasted Company property in the Acquisition. Based on these four allegations, Plaintiffs assert that Elon is liable for disgorgement of unjust enrichment and damages.

Defendants argue that Plaintiffs' allegations are premised on (1) Elon's influence enabling him to control Tesla, Inc. and (2) that the Acquisition was detrimental to Tesla, Inc.'s interests. Plaintiff's evidence does not establish that the Acquisition was harmful to Tesla's interests, and Defendants have evidence to the contrary that Elon did not control Tesla, at least not in this case, in completing the acquisition of SolarCity.

The parties debated whether Elon controlled the board's resolutions and whether the SolarCity Acquisition was detrimental to the interests of Tesla, Inc.

In the Judgment, the trial judge consolidated Plaintiffs' Counts (1)(2) into the "Claims for Elon's Breach of his Fiduciary Duty to Tesla, Inc." and analyzed each of the three consolidated counts as follows:

3.1. Elon Breach of Fiduciary Duty

This major dispute on whether Elon, as the majority shareholder and chairman of Tesla, Inc. breached his fiduciary duties to the company. The key points of review, in turn, are whether Musk's equity holdings and his influence are sufficient to qualify as a controlling shareholder and whether Musk improperly manipulated the decision-making process of the board of directors.


The trial judge found that "determining the correct standard of review is the starting point for reviewing whether (the defendant) breached a fiduciary duty," and that Delaware corporate law's system of review for fiduciary duties is divided into three tiers: the Business Judgment Rule (BJR), heightened scrutiny, and full fairness review.

The Business Judgment Rule (BJR) refers to the court's review of the presumption that board members and senior executives make decisions on an informed basis, in good faith and rationally, and that they have reason to believe that the decision is in the best interests of the company. In other words, the court will normally only maintain a minimal level of skepticism about the decisions of board members and officers unless there is evidence of a breach of fiduciary duty in the decision-making process.

Enhanced Scrutiny is a more deferential standard of review than the business judgment standard, under which the court conducts a substantive review of the decision-making process of the board of directors and senior management, with an emphasis on determining whether the decision-making process was informed, rational, and fair.

The product of an independent process, i.e., whether
"procedural justice" has been met. Entire Fairness is the most demanding standard of review, examining not only the propriety of the decision-making process of board members and senior executives, but also requiring that the decisions produce results that are fair to the company. In the context of this case, it amounts to a review of whether the consideration paid by Tesla for the SolarCity acquisition was fair value.

In this case, Plaintiffs argue that Elon should be subjected to an extremely harsh full fairness review, while Defendants argue that the most lenient business judgment rule should apply, with each side going head-to-head. Whether Musk will be able to apply the business judgment rule as he wishes depends on two other rules established by the Delaware Supreme Court - the Corwin rule [3] and the MFW Rule [4].

The former stipulates that if the takeover decision is made by a majority of shareholders who have no conflict of interest, have sufficient information and are not coerced, then even if there is a material conflict of interest of the controlling shareholders and board members during the takeover process, the court presumes that they have not violated their fiduciary duties to the company and will adopt the most lenient business judgment rules for review. Under China's Company Law, similar to the provisions of Article 124: "If a director of a listed company has a relationship with an enterprise involved in the matters resolved at a board meeting, ....... such board meeting can be held with the attendance of a majority of the unaffiliated directors, and the resolutions made at the board meeting shall be passed by a majority of the unaffiliated directors. The resolution of the board meeting shall be passed by a majority of the unaffiliated directors", i.e., the resolution of the unaffiliated directors can exempt the affiliated directors from the possible breach of fiduciary duty, and this exemption cannot be overruled by the evidence presented by the plaintiffs.

Unfortunately for Elon, the Corwin rule does not apply to a company's controlling shareholders because of a pre-existing judgment [5]. The Plaintiffs are going to great lengths to prove that Elon is a controlling shareholder because the Corwin rule does not apply to controlling shareholders of a company; even if Musk is found not to be a controlling shareholder, he may be precluded from applying the business judgment rule under the Corwin rule because of the affiliations of the other members of the Board of Directors.

The latter provides that the business judgment rule may be applied if the following six conditions are met: (1) the decision originated from a specially established committee (hereinafter referred to as the Special Committee) and received a majority vote of the "minority", which, in the context of China's Company Law, is equivalent to a majority of the votes of the minority shareholders; (2) the Special Committee is independent of other corporate decision-making bodies; (3) the members of the Special Committee have the right to freely choose their advisors and the right to raise objections; and (4) the Special Committee has not violated any of its duty of care in conducting the price negotiations; (5) notice of the vote on the decision is served on the "minority"; (6) there is no "coercion" to the "minority"

It is worth noting that the above "coercion" is not limited to concrete coercion, but also includes abstract and implied differences in voice and leadership. Even in the absence of substantial coercion by a majority shareholder, the MFW rule may not apply simply because of the conceivable and natural "feeling of coercion" that a majority shareholder may emanate, as in this case. The Court found that Elon was "inherently coercive" [6] in Tesla's internal decision-making process and did not establish an independent takeover committee, which ultimately precluded him from applying the MFW rule.

The trial judge did not make a definitive determination as to whether the Corwin rule applied and which rule the Elon would be subject to. Instead, the trial judge shifted his mindset: "Given the difficulty of determining the application of the Corwin rule and the choice of standard of review, it may be appropriate to presume that the most exacting full-fairness review will be applied" to emphasize that Elon had not breached a fiduciary duty in its decision-making in the Acquisition.

3.1.2. Entity Disputes - Fairness of Acquisition Transactions

At this point in the trial, the standard of review of fiduciary duty applicable to this case has been established, that is, full fairness review. And the full fairness review is divided into two major parts, i.e. the review of whether the transaction is fair and the review of whether the price is fair. The former examines whether there are procedural flaws in the board's resolution process, while the latter examines whether Tesla in the Acquisition acquired SolarCity at a sufficiently fair price, i.e., a price sufficiently close to fair value. Of the two, the fair price is the fundamental basis for judging whether the acquisition transaction is fair or not; an empty fair transaction without a fair price will still fail the full fairness review.

3.1.2.1. Fairness of the Transaction (Fair Process)

The task of the Fair-Trading Review, in this case, was to identify how Tesla's acquisition of SolarCity was initiated, constructed, negotiated and disclosed. Through the evidence submitted by the parties, the court found a set of facts, under two categories based on whether they were favorable to Elon:

- Unfavorable facts

The facts most prejudicial to a review of Elon's fiduciary duties in this Acquisition are the failure to establish an independent, conflict-of-interest-free Acquisition Special Committee and his more than reasonable personal involvement in the Acquisition, as identified:

- Elon negotiated with SolarCity's board of directors on several occasions about the acquisition without disclosing it to Tesla's board of directors. For example, announcing to Linden (who is Elon's cousin, SolarCity's founder, and a member of its board of directors) without Tesla's board's approval that Tesla would acquire SolarCity and guaranteeing that Tesla will provide a bridge loan to bail out SolarCity after the purchase closes.

- After making these promises, Elon repeatedly pressured the Board of Directors to put the SolarCity acquisition on the table and instructed Tesla, Inc.'s Chief Financial Officer, without the Board's knowledge or approval, to prepare a financial analysis of the potential transaction prior to the first time that Tesla's acquisition of SolarCity was proposed to Tesla's Board of Directors.

- Elon was involved throughout the selection of Tesla, Inc.'s outside counsel.

- Elon posted about the acquisition on social media the first time the Board decided to make the purchase.

- Elon participated in the initial discussion of the purchase price during the initial presentation of SolarCity by Evercore, the appraisal firm, and suggested that a premium of 30% would be required-slightly higher than the offer made by Evercore, but still within the range of what was fair and reasonable.

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- Elon repeatedly spoke with staff from Evercore, the appraiser, outside of the conference room in order to aggressively update information related to the timing and progress of the acquisition.

- Elon's unauthorized release of the Master Plan for the Acquisition during the negotiation process Part II (the Master Plan Part Deux), apparently to bring in shareholders to intervene in the board's waffling on the takeover.

- When Evercore, the appraisal firm, decided to recommend to the board that the offer be reduced, they disclosed that recommendation in advance to Elon.

- Elon attended a board meeting regarding the reduction of the purchase price.

- Elon publicly demonstrated the (inoperable) solar roof and made promises about the timing of the product's release to the market prior to a vote by Tesla, Inc.'s shareholders.

- Elon's brother, Kimbal, did not recuse himself from voting on the board resolution regarding the acquisition, nor did any other board member who had a conflict of interest with the acquisition.

- The above facts paint a picture of Elon's role in the Acquisition: he was extremely eager for the Acquisition to materialize, while at the same time interfering with the Acquisition throughout the process with his "dominant hand." [7] interfered with the acquisition, and the acquisition process was demonstrably flawed. But does this mean that Elon will lose at the first step of full fairness review? Fortunately, Tesla's internal rules, such as the Board's procedures, include many "laudable features" that protect shareholders' interests by simulating a fair negotiation and provide Musk with a lifeline, i.e., procedurally favorable facts:

  - Favorable facts

- Timing: Plaintiffs allege that Elon is aggressively pursuing the Acquisition in order to provide SolarCity with bailout funds at a point in time he deems appropriate, which is not the case.

- First, the timing of the acquisition was favorable for Tesla. Due to the macroeconomic downturn in the PV industry, the stock prices of PV companies were at an all-time low in 2016, which was an opportunity not to be missed for Tesla, which explains why Elon always seemed eager to facilitate the acquisition.

- Second, the timing of the Acquisition matched Tesla's strategic schedule. When Elon initially approached the Board about acquiring SolarCity, the Board denied his motion, and instead took the Acquisition into consideration after completing the launch of the Model X and before it intended to launch its main product, the Model 3. At this point in time, Tesla's acquisition of SolarCity was intended to fulfill the goal of building a vertically integrated new energy company that it had been building since its inception. The Tesla Gigafactory, which produces lithium batteries capable of storing electricity, and the photovoltaic company, which produces solar panels capable of generating electricity, are the missing pieces on Tesla's path to realizing its vision. Tesla's name change from "Tesla Motors" to "Tesla" after the completion of the acquisition also reflects its corporate plan to transform itself into a unified new energy company.

- Considering both, the timing of Tesla's acquisition of SolarCity is entirely favorable and logical.

- Process organization: Tesla's key process organization for the acquisition was flawless. Throughout the acquisition, there was "convincing" evidence that the process was fair.

- In the resolution, Tesla's board of directors included "the consent of a majority of disinterested shareholders" as a prerequisite to the acquisition, which is consistent with the protections afforded to shareholders under Delaware corporate law.

- And in selecting its advisors, Tesla Inc. chose both top-quality enough independent advisors (Wachtell and Evercore) and a board member with no conflicts of interest, the "undisputed" Denholm.

- In addition, SolarCity was a highly recommended acquisition in Evercore's survey of the PV industry.

- Due Diligence for Price Negotiations: As noted, Director Denholm, who was a savior to Elon, led Evercore through an impeccable due diligence investigation. The investigation pointed out that SolarCity had more serious liquidity risks prior to the acquisition, but was not in a position to fail. This finding gave Tesla a stronger initiative in negotiating with SolarCity, which ultimately resulted in Tesla receiving a superior price that was significantly lower than the initial offer. This is strong evidence of the fairness of the acquisition.

- Independence of the Board of Directors: despite Plaintiffs' claims that the Board of Directors of Tesla, Inc. is under the manipulation of Elon, and that Musk is the dominant force in Tesla, Inc. to outsiders, the fact is that, at least for this case.

- The board of directors of Tesla Inc. maintained a high degree of independence during the acquisition and played an important role in safeguarding the interests of shareholders. The record shows that the Board did not always do what Elon wanted in the numerous resolutions regarding the SolarCity acquisition:

  - Elon approached the Board of Directors to acquire SolarCity in early 2016, but was repeatedly rebuffed because the Board did not believe the timing was right; after the Board agreed to the acquisition, it rejected Musk's offer that was higher than that made by appraiser Evercore and used the results of its due diligence to suppress the offer as much as possible, ultimately obtaining a price far lower than the initial offer; the Board of Directors refused to approve loans committed to SolarCity based on the appraiser's Evercore's recommendation and its own evaluation, refused to approve the loan that Elon had committed to SolarCity; the Board insisted on retaining the right to exit in the event that SolarCity defaulted on its debt covenants in order to avoid negatively impacting SolarCity's liquidity risk; and Elon's insistence on accelerating the acquisition process was ignored by the Board and Appraisal Agency Evercore, which spent a significant amount of time conducting investigations and evaluation.

  - These facts reveal the indisputable fact that, despite the fact that Elon is perceived by outsiders to be the "leadership core" of Tesla, at least in this case, Tesla's board of directors and evaluating body were not at Defendant's disposal.

- The market and Tesla's Board of Directors (regarding SolarCity's predicament) were informed throughout: Tesla's acquisition of SolarCity was well known to stock owners and was widely publicized and discussed. When news of the acquisition broke, the market generally understood the liquidity risk SolarCity was in, with one group viewing the acquisition as a "relief" for SolarCity and another group viewing it as a "pick-up". In addition, all board members were aware of SolarCity's predicament from Evercore, the appraiser, and the fact that it was in dire need of a loan to tide it over.

- Denholm, Advocate for Shareholder Rights: As a strong and independent leading force in the takeover, she insisted on
acting in the interests of shareholders throughout the process. Since chairing Tesla's Corporate Audit Committee in 2014, she has developed a deep understanding of Tesla's financial condition and potential risks unlike any other board member. She and Evercore work collaboratively throughout the process and are committed to providing fair advice to shareholders and directors.

More importantly, as a director who is not under the influence of Elon and has no conflict of interest, she and Musk "buffer" each other in the acquisition, so that outsiders have great certainty to recognize the fairness of the acquisition.

Combining the facts set forth above in favor of and against Elon, the flow of the entire takeover case jumps off the page: Musk, without question, actively pursued the takeover throughout the process, but he did not attempt to coerce, argue, or otherwise prevent the Board from finding a fair purchase price.

With Tesla's announcement of its entry into the photovoltaic industry long before its acquisition of SolarCity, and with the acquisition coming at a price that coincided with a low stock price, the timing of the acquisition made perfect sense; Evercore, an independent evaluator, included SolarCity in its recommendation of the and conducted complete due diligence, ultimately leading to a fair range for the purchase price. The bottom line is this.

The Board of Directors, led by disinterested Director Denholm, conducted a thorough review of the acquisition. All of the foregoing is sufficient to demonstrate that Elon did not "control" the Board or the price in the acquisition.

As noted earlier, a fair process is only meaningful if it produces a fair price; conversely, if the price has been determined to be fair, then the process must be fair, as the presiding judge concluded his review of the process with the phrase: "the proof lies in the results".

3.1.2.2. Whether the Price is Fair

Unlike other value calculations, the fair price component of a full fairness review does not exist to calculate the value of the acquiree with precision; rather, the fair price component looks for "a range of fitness" within which the transaction price is deemed fair.

In this case, the two sides on the value of the SolarCity heated debate, both invited experts to "stand in favor of". Plaintiffs assert that (1) SolarCity is on the verge of bankruptcy, and (2) the purchase price is well above fair value under the DCF analysis.

Defendants, on the other hand, argued that (1) the fair price should be determined by reference to the market price, which was sufficient to justify the fairness of the purchase price; (2) SolarCity's cash flow matched the purchase price; (3) Evercore, the appraisal firm, provided a fairness opinion that the price was fair; and (4) taking into account the potential synergies of the acquisition, the price can be justified as fair.

Ultimately, because plaintiffs' evidence was insufficient to show that SolarCity was "on the verge of bankruptcy" and "worthless," as they claimed, the trial judge found that the purchase price was a fair price and not a "ballpark" price. The trial judge found that the purchase price was fair and not a "sideshow" but a "truly fair price". Accordingly, the court found that the Elon had not breached his fiduciary duty to Tesla.

3.2. Elon Unjustly Enriched

Having completed a full fairness review, the answer to the remaining two allegations becomes apparent.

In Delaware law, there are five major elements of unjust enrichment: (1) one party has profited; (2) one party has been harmed; (3) there is a causal connection between one party's profit and the other party's harm; (4) the profiting party does not have a justifiable reason for the profit; and (5) there are no other remedies available under the law.

In the foregoing fair price review, where the court has found that Tesla's price for SolarCity was "entirely fair," then Elon has not prejudiced Tesla's interests, and element (2) fails, so this allegation is, of course, not substantiated.

3.3. Elon Wastes Corporate Property Causing Damage

In this count, the plaintiffs had the burden of proving, in accordance with established jurisprudence [8] to show that "no one of generally sound business judgment would have thought that the company failed to obtain a benefit commensurate with the price paid (in the case of a takeover) (which in fact the plaintiffs failed to prove). Moreover, as long as good faith judgment was exercised (at that time), even if the transaction is later perceived to be unreasonably risky, it is not considered wasteful [9]. So, clearly, the allegation that Elon wasted company property fails.

3.4. Judgment

In summary, none of the plaintiffs' allegations were sustained, and Musk, as a defendant, won a complete victory; it also means that Musk did not breach his fiduciary duty to Tesla in the case of Tesla's acquisition of SolarCity.

4. Similar Cases in China

After reviewing the Tesla shareholders' lawsuit, I can't help but wonder: if the Tesla shareholders' lawsuit is governed by China's Company Law, how will the court conduct the review of fiduciary duty in the decision-making process? Next, I will focus on the review process of fiduciary duty, and make a comparative analysis of domestic public cases with certain representativeness:

4.1. Zeng v. Yuanda Inc., Liability Dispute for Damaging Shareholders' Interests

4.1.1. Facts

In this case, Plaintiff Zeng Shi holds a 20% equity interest in Defendant Yuanda Company and a 17.64% equity interest in Third-Party Far Pipe Company; Third-Party Far Pipe Company originally held a 20% equity interest in Defendant Yuanda Company. In June 2019, Defendant Zheng Weiwei took advantage of his status as a controlling shareholder of Third-Party Far Pipe Company and his position as Defendant Yuanda Company's legal representative and controlling shareholder to make capital increases to Defendant Yuanda Company without an assessment of Defendant Yuanda Company's assets appraisal, he increased the capital of Defendant Yuanda Company by increasing the registered capital from RMB21.68 million on June 12, 2019, respectively to 51.68 million yuan, and from 51.68 million yuan to 61.68 million yuan on June 18, 2019, for a total capital increase of 40 million yuan. This resulted in the dilution of the Third Party's equity interest in Defendant Yuanda from 20% to 9.7%, thereby substantially reducing the value of the Third Party's actual equity interest.

The Plaintiff argued that the Defendant Zheng Weiwei had abused the rights of shareholders and violated the obligation
of trust and justice of the majority shareholders to the minority shareholders. According to the provisions of Article 20(2) of the Company Law of the People's Republic of China, Defendant Zheng Weiwei should compensate the third party for the resulting loss.

4.1.2. Fiduciary Duty Review

In the course of the trial, the court examined in detail a series of decisions made by the shareholders' meeting of the defendant, Fargo.

The defendant’s capital increase procedure was found to be in full compliance with the mandatory provisions of the Company Law, including: checking the provisions of the Articles of Association, examining the acknowledgement of service of the shareholders’ meeting to confirm whether the notice was sent to all shareholders 15 days in advance and whether 2/3 of the shareholders with the right to vote had voted; checking the agreement between shareholders, verifying the record filed by the industrial and commercial department; and checking the agreement between the defendant and the outsiders.

From the meeting notice of delivery, to the specific agenda, all kinds of values, to the business approval filing, to the legal provisions, capital increase required procedural justice, the court's review can be described as watertight, but in the fact of justice on the hoof, ignored the controlling shareholders in violation of fiduciary duty to manipulate the resolution of the company's clues - the defendant Yuanda original registered capital only The original registered capital of only 21.68 million, the defendant Zheng Weiwei but in just six days’ time twice to 61.68 million, after the capital increase of the registered capital of 284.5% of the original registered capital, the increase in capital is obviously beyond the normal company's business needs. In such circumstances, the court still made the following judgment: "the court that the case of capital increase has a reasonable commercial purpose, the capital increase procedure is lawful", and "reasonable commercial purpose" is only with the outsiders signed the contract 18.

It is undeniable that the business opportunities brought about by capital increase are extremely tempting to the company, but it does not mean that the controlling shareholders can hold up the banner of "corporate interests" and kidnap the interests of small and medium-sized shareholders. As the "helmsman" of the company, the controlling shareholder enjoys more rights than the small and medium-sized shareholders, and naturally must assume more internal responsibilities, including capital increase to seek business opportunities while balancing the interests of small and medium-sized shareholders, so that the company's profits really benefit all shareholders.

In this case, the court for the Defendant Zheng Weiwei's obligation of faith review, no doubt can only be likened to the most lenient "business judgment rule", there is no better. Although the capital increase procedure for a reason, procedural due process, but for the rights and interests of minority shareholders is also a real infringement, and the value of fiduciary duty, is to pierce the surface of the legitimate, for the parties outside the legal framework of justice - "equity". Under an overly lax review system, minority shareholders are held hostage by majority shareholders and are unable to obtain relief, which is happening in countless companies.

4.2. Wang v. E Liability Dispute for Damage to Company's Interests

4.2.1. Facts

Plaintiff Niu Yuanfu, Plaintiff Wang Junjie, since the shares of the third party Meixun Huairou Company, has not been able to participate in, supervise the operation of the company affairs, but also unable to understand the business situation, profitability, and then filed a shareholder's right lawsuit, and obtained a judgment in favor of the lawsuit. In the enforcement of the judgment, Niu Yuanfu and Wang Junjie found that Defendant E Wenxuan had transferred all of the third party's funds of RMB 4,558,361 to Meixun Meitong Company, of which he was the legal representative, executive director and manager, and Defendant Zhang Xiao served as the supervisor, before December 31, 2016, without convening any meeting of the company and without authorization. When Meixun Chaoyang Company was dissolved and canceled on January 14, 2021., E Wenxuan did not claim the return of the relevant amount from Meixun Chaoyang Company, and on the liquidation report of Meixun Chaoyang Company's cancellation, E Wenxuan signed the report confirming that Meixun Chaoyang Company's debts and liabilities had been cleaned up. The above actions seriously harmed the interests of Meixun Huairou Company. E Wenxuan and Zhang Xiao, as executive directors, managers and supervisors of Meixun Huairou Company, took advantage of their control and management position over Meixun Huairou Company to transfer large amounts of money to the related parties without claiming their claims in a timely manner, which caused damage to the interests of Meixun Huairou Company and they should be held liable for compensation to the Company.

Ewen Xuan, as the executive director and manager of Axiomtek Huairou Company, should strictly comply with the provisions of Articles 15 and 16 of the Articles of Association regarding the authority of the executive director and manager. Zhang Xiao, as the supervisor of the third party, should strictly comply with the provisions of Article 18 of the Articles of Association regarding the authority of the supervisors of the company. However, E Wenxuan and Zhang Xiao took advantage of their position of control and management of Meixun Huairou without authorization to transfer large sums of money to related parties and failed to assert their claims in a timely manner, resulting in damage to the interests of Meixun Huairou and should be liable for compensation to the third party.

4.2.2. Fiduciary Duty Review

In this case, there is a huge uncertainty for the review of fiduciary duty - VIE structure. VIE (Variable Interest Entity) structure, also known as agreement control structure, is in essence a form of group of companies in which the offshore shell company actually controls the domestic company by way of a cooperation agreement, and then transfers the revenues and profits of the domestic company to the offshore shell company. The structure generally consists of three companies, an offshore listed company (e.g. Cayman company), a Wholly Foreign Owned Enterprise (WFOE) and a domestic operating entity (VIE).

As part of the structure, the interests of the third party are integrated with Meixun Chaoyang Company and Meixun Hong Kong Company, and the interests of each other are nested in layers and difficult to clarify. At this point, the actual controllers of the company were in the dark, and the damage to the interests of the minority shareholders was difficult to
guard, which was also a challenge to the court's trial. Fortunately, in the face of the intricate legal relationship, the panel peeled off the threads and found that the defendant violated the fiduciary obligations to the company, resulting in the company's claims could not be realized, to the detriment of the interests of other shareholders. In the end, the court issued a 67-page judgment that was no less remarkable than the Delaware Court of Chancery's decision in the Tesla shareholder lawsuit.

5. Inspiration for the Review System of Fiduciary Duty under China's Company Law

5.1. A Thing without Foundation Called “Fiduciary Duty” in China’s Company Law

The fiduciary duty, also known as the obligations of fidelity and diligence, is derived from the concept of "trust" in common law, which is intended to make the trustee always look out for the interests of the principal, rather than use the rights for personal gain.

In the soil of common law, the duty of trust has a long history, deeply rooted in the legal tradition and social value of common law countries, become an indispensable part of the common law, and recently become an unequal social relations as the object of the implementation of the effective legal means of equitable redress [10], widely imitated by the countries around the world, learning. In this context, China's company law naturally joined the trend of borrowing, the introduction of fiduciary duty, used to regulate the controlling shareholders, "directors and supervisors" of the company's abusive behavior, but in judicial practice is not satisfactory.

As in the case of Zeng v. Yuanda Inc., although there is a duty of loyalty and diligence, the judge failed to invoke it in the judicial process, and the judge adhered to the textualism, believing that the plaintiff's claim was "unfounded in the law", but the essence of fiduciary duty lies in the pursuit of substantive justice, and in the fact that it is equitable and not subject to the constraints of the common law.

Without the foundation of case law, fiduciary duty is naturally unsuitable in China. Making rough transplantation of the common law system, but let the judge to stick to the boundaries of the civil law, ignoring the role of custom and customary law, resulting in fiduciary duty review system is difficult to effectively implement in China [11]. Judicially, the judge's discretion should be loosed, so that the judge can rely on the fairness and justice and the understanding of business customs to review the fiduciary duty, so as to solve the dilemma of the fiduciary duty.

5.2. Challenges to Court Review of Fiduciary Duties Posed by the Complexity of Corporate Operations

Corporations, as autonomous organizations established for profit, often have a nearly unlimited power to develop that is unmatched by other organizations. As society's productive activities become increasingly complex, corporate structures are inevitably complicated.

In the Tesla shareholders litigation, most of the evidence and space are used to argue whether SolarCity's financial situation is "worth acquiring", and the court has handed over the work of evaluation organizations and entrepreneurs to lawyers and judges from the business model, long-term layout of the enterprise to the application of DCF analysis; while in the case E v. Wang mentioned above in China, three companies called Meixun formed a variable interest entity (VIE), which brought a lot of trouble to the judge, and it took nearly 40,000 words for the judge to clarify their internal interests in the judgment.

It seems that the intersection of corporate law with economics, finance, accounting, management, computer science and other disciplines is becoming a trend in the 21st century. At the same time, as discussed above, the review mechanism of fiduciary duty is bound to be accumulated in practice as case law, but cannot provide guidance for legal workers to solve the problem through the "previous" provisions of the statute law. This makes it necessary for legal practitioners, led by judges, to keep abreast of emerging concepts and knowledge when reviewing fiduciary duties, in order to find the most fundamental legal relationships in increasingly complex cases.

In China's legal education, the "integration of disciplines" has only just begun, and how to cultivate the cross-disciplinary legal talents needed by society is a topic that needs to be addressed in China's legal education in the future.

5.3. Fair Value Discovery Mechanisms

In the context of corporate decision-making in mergers and acquisitions, one important indicator of whether a corporate controller has breached its fiduciary duties is fair price. As mentioned above, the ultimate goal of a complete fairness review is to examine whether the company received a "fair price" in the transaction, and it is for this reason that almost the entirety of the judgment in this case dwells on the fairness of the price at which Tesla acquired SolarCity.

In a market economy, as the saying goes, "beauty is in the eye of the beholder," those who are good at spotting value may be willing to pay a premium for some commonplace assets. Perhaps at the beginning of the acquisition, Elon offered higher than Evercore, is on behalf of the SolarCity in his mind, for Tesla is extremely high value. And the market performance after Tesla's acquisition of SolarCity has also proved that SolarCity has a very high value for Tesla's strategic layout. If SolarCity's financial situation is poor after its incorporation into Tesla, will the judge still be able to confirm that Elon has not breached his fiduciary duty in ease, and will the judge's judgment on fair value be affected by the changes in market prices, because the lawsuit was filed in 2016 and did not draw an end until 2022?

In the Tesla shareholders litigation, the answer was not clear; in Zeng v. Yuanda Inc., the plaintiff claimed compensation based on the price of the transaction between the defendant and other acquirers, and the court did not comment on it. In China and even in the world, how to efficiently and accurately determine the fair value of a company's equity is worth exploring, and is also an issue of great significance in resolving the review of fiduciary duty in the decision-making process.

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