IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SAM TOPAZ and S.A. TOPAZ MANAGEMENT AND INVESTMENT LTD.,	)	
Plaintiffs,	)	
v.	)	C. A. No. 2020-0290-MTZ
URI GEIGER, MELKER NILSSON, MICHAEL BOURQUE, ERIN ENRIGHT, LIOR SHAV, HOWARD ZAUBERMAN, EREZ COHEN, ACCELMED GROWTH PARTNERS (GP), L.P., ACCELMED GROWTH PARTNERS MANAGEMENT LTD., and AGP SPV I, L.P.,	)	
Defendants,	)	
and	)	
KEYSTONE DENTAL HOLDINGS, INC., a Delaware corporation, and KEYSTONE DENTAL, INC., a Delaware corporation,	)	
Nominal Defendants.	)	

ORDER MAINTAINING STATUS QUO

WHEREAS:

A. On April 19, 2020, Plaintiffs Sam Topaz and S.A. Topaz Management and Investment Ltd. ("Plaintiffs") commenced this action (the "Delaware Action")

by filing a Verified Complaint Pursuant to 8 *Del. C.* § 225, a motion to expedite, and a motion to maintain the status quo (the "SQO Motion").

1. The Delaware Action alleges that beginning on April 13, 2020, certain directors and controllers of the subject Delaware parent company, Keystone Dental Holdings, Inc. ("Holdings"), and the Delaware company it holds, Keystone Dental, Inc. ("Keystone"), engaged in a series of unlawful actions to take control of Holdings and Keystone. Under Israeli law, Keystone is the sole director of an Israeli entity, Paltop Advanced Dental Solutions Ltd. ("Paltop"), and serves as director through a personal representative. The Delaware Action also asserts that the defendant Keystone directors wrongfully took control of Paltop by adopting certain resolutions at the Keystone level that, among other things, installed Erez Cohen as Keystone's personal representative at Paltop (the "Challenged Keystone Inc. Resolutions").

2. The Delaware Action includes several breach of contract claims, including for breach of a Stockholder Agreement dated January 2, 2019, and a Stock Exchange Agreement dated January 2, 2019 (together, "the Agreements"). It also asserts a claim of tortious interference with the Stockholder Agreement and other agreements, and several breach of fiduciary duty claims against certain directors and controllers of Holdings and Keystone. The Delaware Action seeks relief under Section 225 as to the control of Holdings and Keystone.

3. Plaintiffs' proposed status quo order returns the leadership of Holdings and Keystone, and Paltop as directed by Keystone, to that in place as of April 13, 2020, before the events alleged in the Delaware Action transpired. In particular, it invalidates the Challenged Keystone Inc. Resolutions and removes Cohen as Keystone's personal representative at Paltop.

B. Both Agreements contain a Delaware forum selection clause and an arbitration provision allowing any signatory to submit any dispute arising out of the agreement for arbitration under the Delaware Rapid Arbitration Act (the "DRAA"), "notwithstanding the exclusive venue provision"[1] (the "Arbitration Provision"). The Arbitration Provision goes on:

> Without limiting the foregoing, upon such arbitration election by any party hereto, any dispute arising under this … Agreement that is subject to a then pending court action, and which under Delaware law may then be submitted for arbitration under the Delaware Rapid Arbitration Act, shall instead be resolved solely by such arbitration, which arbitration shall be binding and not subject to appeal, and, such dispute pending in any other court shall be immediately dismissed without prejudice.[2]

[1] Docket Item ("D.I.") 14 at Exhibit 1 to Verified Amended Complaint Pursuant to 8 *Del. C.* § 225 ("Amended Complaint"), Stockholders Agreement, §§ 19.1–19.2; Exhibit 2 to Amended Complaint, Stock Exchange Agreement, §§ 10.1–10.2.

[2] D.I. 14 at Exhibit 1 to Amended Complaint, Stockholders Agreement, § 19.2; Exhibit 2 to Amended Complaint, Stock Exchange Agreement, § 10.2.

If disputed, selection of an arbitrator under the Arbitration Provision may take as long as sixty days.[3] Both Agreements also contain provisions establishing injunctive relief and specific performance as permissible remedies to enforce the Agreements.[4]

B. On April 21, Plaintiff Sam Topaz filed an action in Israel captioned *Topaz v. Keystone Dental, Inc., et al.*, (the "Israel Action"), addressing Keystone's actions as Paltop's director, as well as Paltop's management. The parties in the Delaware Action dispute the nature of the Israel Action. Defendants contend it arises out of the Agreements, while Topaz frames it as an Israeli internal affairs action. At a minimum, the Israel Action's allegations invoke the Agreements.

C. On April 21, the Israeli court issued an *ex parte* order upholding the status quo pending *inter partes* review "without revoking the decisions which were made," and ordering Cohen, "in his capacity as sole director of Paltop," to avoid making any decision that would change the company's course of dealings other than

[3] D.I. 14 at Exhibit 1 to Amended Complaint, Stockholders Agreement, § 19.2.2; Exhibit 2 to Amended Complaint, Stock Exchange Agreement, § 10.2.2.

[4] D.I. 14 at Exhibit 1 to Amended Complaint, Stockholders Agreement, § 17 ("Accordingly, it is agreed the parties shall be entitled to an injunction to prevent breaches of this Stockholders Agreement, and to specific enforcement of this Stockholder Agreement and its terms and provisions."); Exhibit 2 to Amended Complaint, Stock Exchange Agreement, § 10.18 ("The parties therefore agree [they]… shall be entitled to seek specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security.").

in the ordinary course of business.[5] The *inter partes* hearing is scheduled for May 6.

D. On April 22, Plaintiffs filed a Verified Amended Complaint Pursuant to 8 *Del. C.* § 225 in the Delaware Action ("Amended Complaint").

E. On April 23, Holdings, together with defendants Uri Geiger and AGP SPV I, L.P., notified Plaintiffs that they elected to arbitrate both the Delaware Action and the Israel Action pursuant to the Agreements.[6]

F. That same day, Defendants Holdings, Keystone, Geiger, Melker Nilsson, Michael Bourque, Lior Shav, Accelmed Growth Partners (GP), L.P., Accelmed Growth Partners Management Ltd., and AGP SPV I, L.P. (together, the "Keystone Defendants") filed a motion to dismiss Plaintiffs' Amended Complaint in favor of arbitration under the Delaware Rapid Arbitration Act, or DRAA (the "Motion to Dismiss").

G. The Keystone Defendants also opposed Plaintiffs' form of status quo order, and submitted their own proposed status quo order retaining their team, including Cohen, in power at Holdings, Keystone, and Paltop. Defendants also

[5] D.I. 17 at Attachment to Letter to The Honorable Morgan T. Zurn from A. Thompson Bayliss, Esq. on behalf of Plaintiffs regarding Israeli Proceedings.

[6] D.I. 18 at Exhibit 5 to Keystone Defendants' Brief in Opposition to Plaintiffs' Motion to Expedite and for an Order Maintaining the Status Quo and in Support of the Keystone Defendants' Motion to Dismiss in Favor of Arbitration Under the Delaware Rapid Arbitration Act.

requested an anti-suit injunction against the Israel Action, in the form of an order with the following language: "Sam Topaz shall take no further steps concerning the Israel Action, shall not file any new Israel Action, and shall withdraw the Israel Action."[7]

H. The parties briefed the SQO Motion and Motion to Dismiss. On April 28, the Court held a hearing, taking this matter under advisement and ordering the parties to submit, among other things, a joint status update regarding the scope of consent to arbitration on April 29.

I. The parties submitted a joint status update on April 29, providing that all parties are willing to stay the Delaware Action and submit all claims in that action to arbitration, so long as the Court enters interim relief in aid of arbitration. The parties seek guidance regarding the Israel Action, as both sides agree to arbitrate the Israel Action, but on different conditions. Plaintiffs seek a stay coupled with interim relief returning Paltop to the *status quo* as of April 13, while Defendants seek the Israel Action's immediate dismissal and believe no *status quo* order regarding Paltop is warranted.

[7] D.I. 18 at [Proposed] Order Maintaining Status Quo ¶ 5.

J. "Delaware law has a strong and established policy favoring arbitration and fully enforcing valid contractual arbitration provisions as set out by statute."[8] In the context of an agreement to arbitrate under the DRAA, this Court may "[i]ssue, only before an arbitrator accepts appointment as such, an injunction in aid of arbitration, provided that the injunction may not divest the arbitrator of jurisdiction or authority."[9] The DRAA gives the arbitrator the power and authority to "award any legal or equitable remedy appropriate in the sole judgment of the arbitrator."[10] Where necessary to prevent imminent irreparable harm, as where the arbitrator cannot afford the appropriate relief, this Court will enter a status quo order in aid of arbitration.[11]

K. The DRAA specifies that a party to an agreement submitting arbitration under the Act has consented to "[t]he submission exclusively to an arbitrator of issues of substantive and procedural arbitrability."[12] "When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the

---

[8] *BFI Waste Sys. of N. Am., Inc. v. Waste Mgmt. Hldgs., Inc.*, 1998 WL 671277, at *2 (Del. Ch. Sept. 1, 1998).

[9] 10 *Del. C.* § 5804(b)(5).

[10] 10 *Del. C.* § 5803(b)(5)(b).

[11] *Flight Options Intern., Inc. v. Flight Options, LLC*, 2005 WL 5756537, at *12 (Del. Ch. July 11, 2005); *see BFI Waste Mgmt.*, 1998 WL 671277, at *3.

[12] 10 *Del. C.* § 5803(b)(2).

contract. In those circumstances, a court possesses no power to decide the arbitrability issue."[13]

L. To justify entry of a status quo order, a party must establish "1) that the order will avoid imminent irreparable harm; 2) a reasonable likelihood of success on the merits; and 3) that the harm to plaintiff[ ] outweighs the harm to defendants."[14] "A status quo order is often warranted in a Section 225 action to "preclude[ ] the directors presently in control of the corporation from engaging in transactions outside the ordinary course of the corporation's business until the control issue is resolved."[15]

M. In control fights where the elements of a status quo order are met and the equities favor the incumbents, Delaware law supports terms preserving the state of affairs under the incumbents until the challenged transactions can be reviewed.[16] "[A]n order that keeps the incumbents in office pending resolution of the case

---

[13] *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). Delaware law is consistent with the FAA in this regard. *The Chemours Co. v. DowDuPont Inc., Corteva, Inc., & E.I. du Pont de Nemours & Co.,* 2020 WL 1527783, at *8 n.105 (Del. Ch. Mar. 30, 2020).

[14] *Gorman v. Salamone,* 2015 WL 4719681, at *8 (Del. Ch. July 31, 2015) (quoting *Raptor Sys., Inc. v. Shepard,* 1994 WL 512526, at *2 (Del. Ch. Sept. 12, 1994)).

[15] *Id.* (quoting *Arbitrium (Cayman Islands) Handels AG v. Johnson*, 1994 WL 586828, at *3 (Del. Ch. Sept. 23, 1994)).

[16] *Gorman*, 2015 WL 4719681, at *8; *Old Fashioned Enters., Inc. v. Popp*, 1996 WL 33167787, at *1 (Del. Ch. Feb. 27, 1996).

prevents the insurgents from prematurely pursuing or implementing the course of corporate action they ultimately seek."[17]

IT IS HEREBY ORDERED, this 4th day of May, 2020, that:

1. At this juncture, this Court's role is to aid arbitration by fully enforcing the parties' agreed-upon arbitration provision, leaving substantive arbitrability for the arbitrator.[18] The Arbitration Provision provides that upon a party's election to arbitrate a dispute "that is subject to a then pending court action," "such dispute pending in any other court shall be immediately dismissed without prejudice."[19] Accordingly, I make no determination as to whether the Israel Action is substantively arbitrable. Based on Defendants' election to arbitrate the Israel Action, under the plain language of the parties' Arbitration Provision to which Topaz agreed, Topaz must "immediately" dismiss the Israel Action, and such dismissal must be without prejudice.

2. The Delaware Action, too, should be "immediately" dismissed without prejudice under the Arbitration Provision. But this Court has statutory jurisdiction

---

[17] Donald J. Wolfe, Jr. & Michael A. Pittenger, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY, § 9.09[f], 9-232 n.172 (2019) (citing *Chadha v. Szeto*, 1993 WL 498186, at *5 (Del. Ch. Nov. 18, 1993)).

[18] *Henry Schein, Inc.*, 139 S. Ct. at 529; *BFI Waste Sys.*, 1998 WL 671277, at *2; 10 *Del. C.* §§ 5804(b)(5), 5803(b)(2).

[19] D.I. 14 at Exhibit 1 to Amended Complaint, Stockholders Agreement, § 19.2; Exhibit 2 to Amended Complaint, Stock Exchange Agreement, § 10.2.

to enter an injunction in aid of arbitration, and both parties seek immediate relief in the form of a status quo order pending appointment of an arbitrator, which may take as long as sixty days under the Arbitration Provision.[20]

3. In further aid of arbitration, this Order shall control the governance and management of Holdings and Keystone, including Keystone's actions as Paltop's director, "before an arbitrator accepts appointment as such."[21]

a. Both sides seek entry of a status quo order, and indeed, the elements necessary to justify entry of a status quo order have been met. The breach of contract, tortious interference, and breach of fiduciary duty claims demonstrate a reasonable likelihood of success on the merits.[22] Additionally, the harm established from a rudderless Delaware entity and the potential unauthorized wielding of power is sufficient imminent irreparable harm to merit a status quo order.[23] The harm to Plaintiffs also outweighs the harm to Defendants, whose actions and appointment to management are being challenged before this Court. "[I]t is undesirable to permit [those] who are managing the firm pendente lite (but who may later be found not to be … lawful …) to make material, potentially irreversible changes in the firm or in

[20] 10 *Del. C.* § 5804(b)(5); D.I. 14 at Exhibit 1 to Amended Complaint, Stockholders Agreement, § 19.2.2; Exhibit 2 to Amended Complaint, Stock Exchange Agreement, § 10.2.2.

[21] 10 *Del. C.* § 5804(b)(5).

[22] *Gorman*, 2015 WL 4719681, at *8.

[23] *Id.*

its assets or business."[24] "[T]he balance of harms weighs in favor of protecting [Holdings and Keystone] from further uncertainty."[25]

b. The status quo to be preserved is that of just before the events at issue started to unfold. Management of Holdings and Keystone shall be as they were on April 12, 2020, prior to any of the challenged actions. This action was brought swiftly after the challenged transactions were enacted, and other than the Paycheck Protection Program Forgivable Loan ("PPP Loan") discussed below, it does not appear that Defendants' team has taken any actions *vis a vis* third parties that are challenged or need to be undone. The equitable concerns in *Matter of Hybrilonics, Inc.* are not invoked here.[26] Nor are there concerns about restoring otherwise inactive leadership, as in *Pharmalytica Servs., LLC v. Agno Pharm., LLC*.[27] All of the players have been and have remained on the stage.

c. With the status quo returning to April 12, 2020, prior to the adoption of the Challenged Keystone Inc. Resolutions, Keystone, in its role as

---

[24] *Arbitrium (Cayman Is.) Handels AG v. Johnson*, 1994 WL 586828, at *3 (Del. Ch. Sept. 23, 1994). Here, the directors of all three entities have remained the same; the challenged control is being wielded in other ways.

[25] *Salamone v. Gorman*, 2014 WL 3905598, at *3 (Del. Ch. July 31, 2014) ("The risk that routinely occurs in these scenarios in which a new board may function until the summary proceeding is resolved, only to be determined to have been unlawfully empowered, counsels in favor of the status quo order.").

[26] 514 A.2d 413, 413 (Del. 1986) (TABLE).

[27] 2008 WL 2721742, at *3 n.6 (Del. Ch. July 9, 2008).

Paltop's director, shall restore Topaz as Keystone's personal representative. Keystone shall do so upon Topaz's dismissal of the Israel Action, out of respect for the Israel Court's governing *ex partes* order.

d. While this Order is effective, Holdings and Keystone, their respective directors and officers, and anyone working at their direction, including, but not limited to, their respective management, shall operate in the ordinary course.

e. With this guidance, the parties shall submit a stipulation and proposed order or competing orders, if a stipulation cannot be agreed upon, within five business days detailing the terms that shall govern the ordinary course of business at Holdings and Keystone. These terms shall address, but need not be limited to, the PPP Loan and transactions considered to be outside the ordinary course of business.

4. While this Order addresses Keystone's selection of its personal representative in its role as Paltop's director, it does not further address Paltop's management or operations. Paltop is not a party to this litigation, nor is it a Delaware entity. Accordingly, this Court lacks the *in personam* jurisdiction necessary to enforce a contract, and Paltop as a *res* is not before this Court under Section 225.[28]

[28] *Genger v. TR Inv'rs, LLC*, 26 A.3d 180, 199 (Del. 2011) ("A Section 225 proceeding is not an *in personam* action. Rather, it is 'in the nature of an *in rem* proceeding,' where the ''defendants are before the court, not individually, but rather, as respondents being invited to litigate their claims to the *res*."); *Cornerstone Techs., LLC v. Conrad*, 2003 WL

5. This Court will retain jurisdiction of the Delaware Action under this Order in aid of arbitration until an arbitrator is appointed.[29] Pursuant to the terms of the Arbitration Provision, the parties shall submit a stipulation and proposed order dismissing the Delaware Action, without prejudice, upon selection of an arbitrator.[30]

6. The parties shall submit a joint status update on the appointment of an arbitrator, as governed by the Agreements, within 30 days of this Order.

/s/ Morgan T. Zurn
Vice Chancellor Morgan T. Zurn

1787959, at *11–12 (Del. Ch. Mar. 31, 2003); *Feeley v. NHAOCG, LLC*, 2012 WL 966944, at *5 (Del. Ch. Mar. 20, 2012).

[29] 10 *Del. C.* § 5804(b)(5).

[30] D.I. 14 at Exhibit 1 to Amended Complaint, Stockholders Agreement, § 19.2; Exhibit 2 to Amended Complaint, Stock Exchange Agreement, § 10.2.