

IN THE CHANCERY COURT, STATE OF WYOMING

2023 WYCH 7

WY Chancery Court
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CH-2023-0000028
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FILED

AishangYou Limited, Dada Business Trading Co.,
Limited, Dongpin Liu, Fengzhen Ai, Min Li, Peifeng
Yu, Pijun Liu, Wenwen Yu, and Yanqin Chen,

Plaintiffs and Counterclaim-Defendants,

v.

WeTrade Group, Inc.

Defendant, Counterclaimant, and Third-
Party Plaintiff,

v.

Zheng Dai and Lina Jiang,

Third-Party Defendants.

Case No. CH-2023-0000028

Order Denying Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction

[¶ 1] Before the court is plaintiffs' motion for a temporary restraining order and preliminary injunction. (FSX No. 71134170). The parties fully briefed the motion, and the court heard oral argument on November 3, 2023. For the reasons below, plaintiffs' motion is denied.

BACKGROUND

[¶ 2] This case is about control of WeTrade Group, Inc., a Wyoming corporation publicly traded on Nasdaq and operated in China. *Compl.*, ¶¶ 16 & 18. According to WeTrade's website, the corporation "is a global diversified 'software as a service' ('SaaS') technology service provider which is committed to providing technical support and digital transformation tools for enterprises across different industries." *See id.*, ¶ 21.

[¶ 3] Plaintiffs are individuals and entities who purport to be majority shareholders of WeTrade. *Id.* ¶¶ 7-15. Other than plaintiff Wenwen Yu who resides in Florida, the remaining shareholders reside in China. *Id.*

[¶ 4] Plaintiffs first brought a derivative action on behalf of WeTrade in federal court against disputed officers and directors whom plaintiffs assert resigned and were formally removed from their positions but nonetheless hold themselves out as WeTrade's officers and directors. Due to concerns over personal jurisdiction, the shareholders dismissed their federal derivative action and instead filed this direct action on October 18, 2023, naming WeTrade as defendant. *See id.*, ¶ 97.

[¶ 5] At its core, this action asks the court to determine which of two sets of boards of directors legally controls the defendant corporation. Both sides allege that the other has hijacked control over WeTrade.

[¶ 6] The shareholders' case starts with a default provision in an agreement signed in connection with a business arrangement involving three corporations. Plaintiffs assert that on December 19, 2022, WeTrade guaranteed a loan between two unaffiliated companies: HYT and BWT. *Id.*, ¶ 40. WeTrade allegedly agreed to guarantee about \$3.4 million in exchange for HYT promoting WeTrade products and providing online expansion channels. *Id.*, ¶¶ 41-42. Under the guarantee, the officers and directors of WeTrade would resign if the loan was in default as of June 30, 2023. *Id.*, ¶ 51.

[¶ 7] Although disputed by WeTrade, the shareholders contend that, on account of the loan's default, WeTrade's then officers and directors resigned on June 30, 2023, in accordance with the guarantee. *Id.*, ¶ 62. The shareholders further allege they formally removed the disputed directors via a written consent executed on September 22, 2023. *Id.*, ¶1. Despite the resignations and removal, the disputed directors and officers continue to hold out to the public that they currently control WeTrade and have taken actions the shareholders deem improper. *Id.*, ¶¶ 63-97.

[¶ 8] The shareholders' complaint seeks a declaratory judgment under Wyo. Stat. § 1-37-103. Among other things, they ask the court to declare invalid three transactions undertaken by the disputed directors: (1) the issuance of 1,570,600 shares of WeTrade common stock, (2) the purchase of Bitcoin, and (3) the sale of WeTrade's property.

[¶ 9] Plaintiff shareholders moved for a TRO on the same day as they filed their complaint. Their TRO motion asks the court to enjoin acts of the disputed directors and officers, "including, but not limited to, issuing 1,570,600 shares of [WeTrade's] common stock, purchasing Bitcoin, and selling [WeTrade's] assets." *Pl. Mot.*, p.2. Defendant followed with a counterclaim and TRO motion of its own.

[¶ 10] Following voluminous, expedited briefing, the parties requested a ruling on their cross motions by November 7, 2023. The court held a hearing on both motions on November 3, 2023, and now finds and rules as follows on plaintiffs’ motion. The court will rule on defendant’s motion separately.

LEGAL STANDARDS

[¶ 11] A temporary injunction has long been labeled “an extraordinary remedy.” *E.g., Malave v. W. Wyoming Beverages, Inc.*, 2022 WY 14, ¶¶ 7-8, 503 P.3d 36, 39 (Wyo. 2022). A party seeking a temporary injunction must make a clear showing of (1) probable success on the merits and (2) possible irreparable injury if the injunction is denied. *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 2009 WY 113, ¶¶ 7-10, 215 P.3d 1054, 1057-58 (Wyo. 2009).

ANALYSIS

A. The direct-derivate distinction matters.

[¶ 12] Wyoming law distinguishes between derivative and direct actions. *Mantle v. N. Star Energy & Constr. LLC*, 2019 WY 29, ¶152, 437 P.3d 758, 806–07 (Wyo. 2019). In a derivative action, a shareholder “asserts a cause of action on behalf of the corporation.” *Sullivan v. Pike & Susan Sullivan Found.*, 2018 WY 19, ¶ 22, 412 P.3d 306, 312, 313–14 (Wyo. 2018). But in a direct action, the shareholder asserts his own cause of action based on a “special injury” distinct from those suffered by the corporation and other shareholders. *See Wallop Canyon Ranch, LLC v. Goodwyn*, 2015 WY 81, ¶ 29, 351 P.3d 943, 951 (Wyo. 2015).

[¶ 13] The distinguishing feature between derivative and direct actions is the injury. Or, as recently reiterated by the Wyoming Supreme Court, the “bearer and nature of the alleged injury.” *Campbell v. Davidson*, 2023 WY 100, ¶ 40 (Wyo. 2023). An action seeking to remedy an injury to the corporation rather than to the shareholder is derivative. *Sullivan*, ¶ 22, 412 P.3d at 312. Stating this principle another way, an action is derivative when the shareholder was not injured “directly or independently” of the corporation. *Mantle*, ¶ 152, 437 P.3d at 806–07.

[¶ 14] Focusing on alleged injuries, the Wyoming Supreme Court has categorized actions as derivative in the circumstances bulleted below.

- A director seeking to void the election of another director was asserting a derivative action. *Sullivan*, ¶¶ 22-24, 412 P.3d at 312–14 (Wyo. 2018).

- A claim that a general partner failed to reimburse the partnership for partnership property was a derivative claim because the injury was “the devaluation of [partners’] non-particularized interest in [a] limited partnership.” *Fritchel v. White*, 2019 WY 117, ¶¶ 13-23, 452 P.3d 605–07 (Wyo. 2019).
- A claim about officers and directors’ alleged failure to observe proper voting procedures was a derivative claim because the injury of a lower sale price primarily harmed the cooperative and only indirectly harmed members of the cooperative. *Campbell*, ¶ 45.
- A claim about grifting was derivative because the grifting impacted an entire limited liability partnership directly and did not impact limited partners uniquely. *Wallop Canyon Ranch, LLC*, ¶¶ 28-32, 351 P.3d at 951–52.

[¶ 15] The distinction between derivative and direct actions matters here because Wyoming has “never strayed from the rule that derivative injuries must be remedied by derivative actions.” *Fritchel*, ¶ 22, 452 P.3d at 606. “A plaintiff who mischaracterizes a derivative cause of action as direct risks dismissal of the claims for failure to comply with derivative suit procedural requirements.” *Campbell*, ¶ 41 (cleaned up) (quoting *Mantle*, ¶ 154, 437 P.3d at 807). These requirements include making a pre-suit written demand upon the corporation and making specific allegations. Wyo. Stat. § 17-16-742 (demand requirement); W.R.C.P.Ch.C. 23.1 (special pleading requirements for derivative actions).

B. The well-established rule that derivative injuries must be remedied by derivative actions dooms plaintiffs’ claims.

[¶ 16] Plaintiffs are unlikely to succeed on the merits because they disguise a derivative action as a direct action. While plaintiffs’ complaint states the relief they seek, the motion for preliminary injunction reveals the injuries plaintiffs hope to remedy. Specifically, plaintiffs warn the following harm will result from the disputed directors’ and officers’ control of the corporation.

- Permitting “resigned directors and officers to act on behalf of [WeTrade] is tantamount to ‘the hijacking of [WeTrade’s] business.’” *Plfs Mot for TRO*, at page 17.

- The disputed directors’ and officers’ plan to purchase Bitcoin “may cause legal trouble for [WeTrade], because its business is conducted primarily in China, and China has made Bitcoin investments illegal.” *Id.* at page 18.
- The disputed directors and officers plan to illegally gut the corporation by selling corporation assets. *Id.* at 19
- The unauthorized issuance of shares “results in the dilution of all shareholders’ shares.” *Id.*

As detailed below, these harms run to the corporation and cannot be rectified by a direct action.

i. Corporate squatting injures the corporation generally and does not independently and uniquely injure shareholders.

[¶ 17] In claiming corporate hijacking, plaintiff shareholders allege no “special injury” distinct from those suffered by the corporation and other shareholders. *Wallop Canyon Ranch, LLC*, ¶ 29, 351 P.3d at 951. Wyoming courts have recognized that claims seeking to remove board members are derivative in nature. *Sullivan*, ¶¶ 22-24, 412 P.3d at 312–14 (Wyo. 2018) (affirming district court determination that action to remove a board member based on conflict of interest was derivative in nature).

ii. Assertions about illegal Bitcoin investment and corporate asset sales are akin to two classic derivative claims: breach of fiduciary duty and corporate waste.

[¶ 18] Plaintiffs assert Bitcoin is illegal in China and the disputed directors’ planned purchase of Bitcoin “may cause legal trouble **for WETRADE.**” *Plfs Mot for TRO*, at page 17 (emphasis added). Notably, plaintiffs do not raise any concerns about legal trouble or “special injury” for individual shareholders as is required of derivative claims. *Wallop Canyon Ranch, LLC*, ¶ 29, 351 P.3d at 951.

[¶ 19] Plaintiffs’ assertion of illegal conduct and corporate waste is akin to breach of fiduciary duty. *See, e.g., Miller v. Am. Tel. & Tel. Co.*, 507 F.2d 759, 762 (3d Cir. 1974) (“even though committed to benefit the corporation, illegal acts may amount to a breach of fiduciary duty . . .”). Under Wyoming statute, such a duty is owed to the corporation itself—not to its shareholders. *See Orthopedics of Jackson Hole, P.C. v. Ford*, 2011 WY 50, ¶ 52, 250 P.3d 1092, 1104 (Wyo. 2011) (“Section 17–16–830(a) embodies the principle that corporate officers and

directors have a fundamental duty of loyalty and fiduciary responsibility to their corporation.”). Consequently, a “claim for breach of fiduciary duty is generally derivative in nature.” *Campbell*, ¶ 42 (citing 12B Fletcher Cyc. Corp. § 5923.30). Such claims must be asserted via a derivative action. *Pullman-Peabody Co. v. Joy Mfg. Co.*, 662 F. Supp. 32, 35 (D.N.J. 1986) (“Claims of breach of fiduciary duty and of corporate waste are facially claims of injury to the corporation and clearly not individual bases for litigation. Suits challenging alleged mismanagement must be brought as derivative actions.”). See also *VGS, Inc. v. Castiel*, 2003 WL 723285, *10 (Del. Ch. 2003) (“claim for waste, mismanagement, and self-dealing . . . is clearly derivative in nature”).

iii. Share dilution is a quintessential derivative claim.

[¶ 20] Plaintiffs complain the unauthorized issuance of stock will result in the “dilution of **all of the shareholders’ shares . . .**” *Plfs Mot for TRO*, at page 19 (emphasis added). But dilution of all shareholders’ shares is the exact opposite of the type of direct and unique shareholder injury that defines direct claims. See *Fritchel*, ¶ 14, 452 P.3d at 606. Share dilution shared by all shareholders signifies a “non-particularized interest,” not a “special injury.” See *Fritchel*, ¶¶ 22-23, 452 P.3d at 607.

[¶ 21] Stock dilution has rightfully been described as the “quintessential” derivative claim. See *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248, 1265 (Del. 2016) (Strine, J., concurring) (“a claim that an entity has issued equity in exchange for inadequate consideration—a so-called dilution claim—is a quintessential example of a derivative claim”). The weight of authority across other jurisdictions supports that characterization. *E.g.*, *F5 Capital v. Pappas*, 856 F.3d 61, 72 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 473 (2017) (“Typically, a ‘claim for wrongful equity dilution is premised on the notion that the corporation, by issuing additional equity for insufficient consideration, made the complaining stockholder’s stake less valuable,’” making the claim derivative).

C. Plaintiffs’ personal jurisdiction challenges neither change the nature of this action nor alter the longstanding rule that derivative injuries must be remedied by derivative actions

[¶ 22] Plaintiff shareholders understood the derivative nature of their claims when they first filed a derivative action on behalf of the corporation in federal court against the disputed

directors and officers. *AiShang You Limited, et al. v. Biming Guo, et al.*, No. 2:23-cv-00178-ABJ (D. Wyo. Sept. 27, 2023). When asked about the change from derivative to direct action and from federal court to chancery court, counsel for plaintiff suggested concerns about lack of personal jurisdiction over the disputed directors and officers motivated the change in strategy.

[¶ 23] Plaintiffs seem to suggest the court should allow their direct action to proceed because otherwise they would have no venue in Wyoming to seek resolution of this dispute. Though the court acknowledges plaintiffs' predicament, plaintiffs' personal jurisdiction limitations offer insufficient reason to "stray[] from the rule that derivative injuries must be remedied by derivative actions." *See Fritchel*, ¶ 22, 452 P.3d at 606.

CONCLUSION

[¶ 24] Because plaintiffs seek to remedy derivative injuries in a direct action they are not likely to succeed on the merits. Accordingly, the court **DENIES** plaintiffs' motion for a temporary restraining order and preliminary injunction.

IT IS SO ORDERED.

DATED: 11/7/2023

/s/ Richard L. Lavery
CHANCERY COURT JUDGE