IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MULTI-FINELINE ELECTRONIX, INC., a Delaware corporation,	)	
Plaintiff,	)	
v.	)	C.A. No. 2482-N
WBL CORPORATION LIMITED, a Singapore company,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Submitted: January 10, 2007
Decided: February 2, 2007

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LAMB, Vice Chancellor.

The independent directors of a Delaware corporation bring this action against the company's controlling stockholder, a Singapore entity, to enforce what the corporation claims is the controlling stockholder's fiduciary duty to vote against a transaction that the independent directors once authorized but no longer support. Ironically, those directors predicate the existence of personal jurisdiction over the Singapore parent company on a consent to jurisdiction clause found in a lock-up contract employed by them to secure the parent's agreement to support the proposed transaction. The controlling stockholder moves to dismiss the complaint on several grounds, including lack of personal jurisdiction and non-justiciability.

Because the consent to jurisdiction clause found in the lock-up contract does not provide a valid basis for the court to exercise personal jurisdiction over the controlling stockholder in this suit for breach of fiduciary duties and since the controlling stockholder has no other substantive contacts with Delaware, the motion to dismiss for lack of personal jurisdiction must be granted. Moreover, the court finds that the purported dispute in this case does not present a justiciable controversy, and, thus, dismissal is also required by a proper application of the doctrines of ripeness and mootness.

I.

A. The Parties

The plaintiff in this action is Multi-Fineline Electronix, Inc. ("M-Flex"), a Delaware corporation involved in manufacturing advanced flexible printed circuits and in providing assembly solutions to the electronics industry. M-Flex is headquartered in Anaheim, California. Its common stock trades on the NASDAQ Global Select Market.

The defendant is WBL Corporation Ltd., a Singapore company engaged in technology manufacturing, automotive distribution, and technology solutions. WBL beneficially owns 61% of M-Flex's common stock, as well as 56% of the common equity of MFS Technology Ltd., another Singapore company that operates in the technology field. MFS is the potential acquiree in the proposed transaction discussed below.

B. The Facts

1. The Offer

On March 30, 2006, M-Flex announced its intention to purchase all of the outstanding stock of MFS through a "pre-conditional voluntary tender offer" pursuant to Singapore law (the "Offer"). Once the Offer is made, each MFS stockholder who chooses to participate may tender its shares for either M-Flex stock or cash. If the cash option is chosen, the stockholder will receive either

S$1.15[1] or S$1.20, depending on the total number of shares that tender.[2] If the stock is selected, the stockholder will receive 0.0145 shares of M-Flex common stock in exchange for each MFS share tendered. Any MFS stockholder who elects the stock option must agree not to sell any M-Flex shares so received for six months following the Offer's closing date.

The Offer is conditioned upon a favorable vote of the majority of M-Flex's stockholders. In connection with that requirement, a special committee composed of M-Flex's independent directors requested that WBL agree to vote its M-Flex shares in favor of the Offer and to tender its MFS shares in return for M-Flex stock only, rather than the cash option available to other MFS stockholders. WBL acquiesced to these terms and memorialized its agreement by executing a letter of undertaking.

During this whole process, the minority stockholders of both M-Flex and MFS were afforded procedural protections designed to insulate the Offer from WBL's potential conflict of interest as the controlling stockholder of both companies. An independent special committee of MFS's directors and the M-Flex special committee negotiated the terms of the Offer in an arm's-length bargaining

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[1] Throughout this opinion, "S$" refers to a value in Singapore dollars.

[2] If less than 90% of the MFS shares are tendered, those stockholders will receive S$1.15 per share. If 90% or more of the MFS shares participate, the consideration increases to S$1.20. In determining whether the 90% threshold is met, those MFS shares beneficially owned by WBL are ignored.

process. Also, M-Flex's certificate of incorporation requires approval of the Offer by a majority of the M-Flex shares not affiliated with WBL. Thus, while WBL agreed to vote its majority shares in favor of the transaction, that vote is not sufficient to approve the transaction. Instead, the holders of a majority of the approximately 40% minority position also have to vote in favor of the deal.

The Offer is subject to several conditions precedent. First, the SEC must declare M-Flex's Form S-4 effective before the Offer can move forward. Second, no injunctions can be issued or threatened in connection with the Offer. Third, MFS may not enter into any "material transaction" prior to the Offer. Fourth, MFS may not incur any indebtedness exceeding S$1 million outside of its ordinary course of business before the Offer commences. Finally, a "material adverse change" cannot occur in MFS's business, an event specifically defined as a decrease in MFS's net assets of greater than 10%. Additionally, in order for M-Flex to properly withdraw the Offer based on the non-satisfaction of any one of the last four conditions, the company must first obtain the consent of the Securities Industry Counsel ("SIC"), Singapore's regulatory body.

2. The Letter Of Undertaking

M-Flex (through its special committee), MFS (through its special committee), and WBL were the three parties to the letter of undertaking (the "Lock-Up"). WBL was thereby obligated to vote its M-Flex shares in favor of the

Offer, to accept stock consideration in exchange for its MFS shares, and "to do any act necessary to give full effect" to the Lock-Up.

The Lock-Up provided, with one exception, that it would be governed by Singapore law. The parties did agree that WBL's obligation to vote its M-Flex shares in favor of the Offer and against any competing transaction would be governed by Delaware law. WBL further agreed to submit to the exclusive jurisdiction of the Delaware courts "with respect to any controversy" arising from that voting obligation.[3] The Lock-Up, however, expired automatically on its drop-dead date of December 31, 2006. So, while the Lock-Up was in effect when suit was filed and when WBL and M-Flex submitted their briefing and argued before the court on December 6, that agreement is no longer legally operative.[4]

3. The Prospects Change For M-Flex And MFS

At the time of the Offer's initial announcement in March 2006, the aggregate consideration to be paid for MFS, based on the then current stock price of M-Flex, was in excess of U.S. $500 million. Because the exchange ratio allowed MFS stockholders to acquire M-Flex stock at a substantial discount to its then existing market price of around U.S. $65, M-Flex's special committee believed that the vast

[3] All other disputes were subject to the non-exclusive jurisdiction of the Singapore courts.
[4] Following argument of the motions to dismiss both this and a related action, the parties formally asked the court to stay its decision. The related action was dismissed by stipulation dated January 19, 2007.

majority of MFS's minority stockholders would opt for the stock consideration. In that case, the cash consideration M-Flex would have to pay, as estimated by its special committee, was approximately U.S. $6 million.

On August 22, 2006, the M-Flex special committee withdrew its previous recommendation in favor of the Offer and strongly recommended that M-Flex stockholders cast their votes against it. This decision was allegedly based on several factors. First, following the announcement of the Offer, M-Flex's stock price fell drastically and, by mid-August, had lost roughly 60% of its value. Second, the proposed acquiree, MFS, suffered a serious financial reversal. On August 7, 2006, MFS announced significant decreases in its net sales and net income for the third quarter of its 2006 fiscal year.

Thus, based on MFS's declining performance and the drop of M-Flex's stock price, M-Flex's special committee determined that the Offer was no longer in the best interests of the M-Flex stockholders. Specifically, the special committee believed that substantially all of MFS's minority stockholders would now elect cash consideration under the Offer. The cost of debt service on the U.S. $218-$227 million required to consummate the Offer under those conditions would, according to the special committee, place a "substantial strain on the combined company's resources [and] eliminat[e] the anticipated benefits of the Offer."

4. A Hedge Fund Enters The Picture

Stark Investments began to purchase substantial blocks of M-Flex common stock beginning in mid-June 2006. By September 29, 2006, Stark had acquired 4,503,220 shares of M-Flex common stock, bringing its ownership up to 18.4%, or approximately 48% of the M-Flex minority shares outstanding. Notably, Stark purchased approximately 1,500,000 of those shares after the M-Flex special committee's August 22 announcement that it was reversing its recommendation on the Offer.

Despite the M-Flex special committee's strong negative recommendation, Stark repeatedly and publicly stated its position in favor of the proposed transaction. On October 10, 2006, M-Flex learned from MFS that, as of September 5, 2006, Stark beneficially owned at least 4.9% of MFS's outstanding shares and, thus, that its position in favor of the proposed transaction was tinged with conflicting economic interests.

5. M-Flex's Special Committee Takes Action

Pursuant to the express terms of the Offer and under Rule 4 of the Singapore Code on Takeovers and Mergers, M-Flex must have the approval of the SIC to withdraw the Offer. The SIC denied M-Flex's initial request for withdrawal. M-Flex appealed that decision on October 19, 2006. On November 9, 2006, the

SIC asked for additional information regarding issues addressed in the appeal. In early January 2007, the SIC denied the M-Flex appeal.

In addition to seeking relief from Singapore's regulatory authority, M-Flex's special committee formally offered to release WBL from its voting obligations under the Lock-Up. WBL, however, refused this overture and publicly reaffirmed its intent to perform its obligations. MFS's special committee did not propose to release WBL from those same obligations.

On October 17, 2006, M-Flex brought this action for declaratory and mandatory injunctive relief that would direct WBL to vote against the proposal. M-Flex asserts that, notwithstanding the expressly contrary provisions of the Lock-Up, WBL's fiduciary duties require it to abandon the Lock-Up and vote against the proposed transaction in accordance with the special committee's recommendation. WBL has moved to dismiss the complaint on several grounds.

II.

WBL first asserts that the complaint does not present a justiciable controversy. It argues that M-Flex's claim is now moot since the Lock-Up expired on December 31, 2006. Further, WBL argues, any potential dispute between the parties lacks ripeness since M-Flex's complaint contains no well pleaded allegation of fact that WBL intends to vote in favor of the Offer now that the Lock-Up has lapsed.

WBL additionally offers a number of procedural arguments for dismissal. First, it argues that MFS is an indispensable party to this litigation, and dismissal of the complaint is proper under Court of Chancery Rule 12(b)(7) due to M-Flex's failure to join MFS. WBL also seeks dismissal under Rule 12(b)(2) for lack of personal jurisdiction, arguing that the consent to jurisdiction clause in the Lock-Up provides no basis for the assertion of jurisdiction over it since the complaint does not arise under that agreement or allege any breach of its terms but, instead, is predicated on an alleged breach of fiduciary duty. Furthermore, WBL contends that Delaware's long-arm statute, 10 *Del. C.* § 3104, is inapplicable, both because that statute is not cited as a basis for jurisdiction in M-Flex's complaint and because, in any event, neither specific nor general jurisdiction pursuant to the statute exist here. For similar reasons, WBL also argues that dismissal is warranted under Rule 12(b)(5) due to insufficient service of process.

Finally, WBL challenges the merits of the complaint for failure to state a claim upon which relief can be granted under Rule 12(b)(6). First, WBL argues that as a controlling stockholder it owes fiduciary obligations only to fellow stockholders, not to the corporation generally. Thus, it asserts that M-Flex's special committee has no standing to properly maintain an action against WBL for breach of fiduciary duty. Alternatively, WBL argues, even if M-Flex can maintain such a suit, Delaware law does not require a controlling stockholder to vote its

shares in any particular manner. In the absence of an allegation of unfair dealing or unfair price, a controlling stockholder's discharge of its fiduciary duties is not subject to enhanced judicial scrutiny. Accordingly, WBL should enjoy the freedom to vote its shares according to its own economic interests.

M-Flex responds that WBL's fiduciary duties as a controlling stockholder require that WBL vote against the proposed transaction. In its papers and at oral argument, M-Flex offered the following line of reasoning. First, the M-Flex special committee has determined that, as a result of changed circumstances, the Offer is no longer in the best interests of the corporation and has recommended that all stockholders vote against it. Second, the Lock-Up, while it was in effect, required WBL vote in favor of the Offer, and WBL, notwithstanding the special committee's changed recommendation, refused to acquiesce to M-Flex's proposal to release WBL from that obligation. Third, the majority-of-the-minority voting provision in M-Flex's charter is an illusory protection for M-Flex's minority stockholders given Stark's conflicted interests. This is so, M-Flex argues, because Stark owns enough M-Flex stock to determine the outcome of that vote and because Stark's economic interests in voting those shares are adverse to the remaining minority stockholders who do not have a position hedged with MFS stock. Finally, M-Flex argues that the consummation of the Offer will cause it to suffer grave and irreparable harm.

M-Flex further contends that, despite the absence of any allegations in the complaint pointing to an unfair process initiated by WBL or to any unfair consideration that WBL stands to receive under the Offer, the Offer is subject to entire fairness because WBL is the controlling stockholder of both companies involved. Given the unique facts of this case, M-Flex argues, WBL can only satisfy its fiduciary obligations to M-Flex by voting against a transaction that the special committee has determined to be contrary to the company's best interests. Additionally, on the standing issue, M-Flex says Delaware precedent amply illustrates that a controlling stockholder owes fiduciary duties not only to the minority stockholders, but to the corporation itself. Thus, M-Flex has standing to bring suit against WBL.

In response to WBL's arguments for dismissal on procedural grounds, M-Flex says that two separate bases exist for the court to assert personal jurisdiction over WBL. First, by the express terms of the Lock-Up, WBL consented to the jurisdiction of Delaware courts with respect to "any controversy" arising from its voting obligations thereunder. Second, broadly examining the attendant circumstances here, jurisdiction under 10 *Del. C.* § 3104 would comport with fundamental notions of fairness and would not violate WBL's due process rights under the Fourteenth Amendment of the United States Constitution. And since WBL either consented to jurisdiction in Delaware or falls within the long-arm

statute, M-Flex says WBL cannot complain that service of process effectuated under 10 *Del. C.* § 3104 was improper. M-Flex also argues that MFS is not an indispensable party because WBL, as MFS's controlling stockholder, can fully protect whatever interests MFS has in this litigation.

M-Flex also offers rebuttals to WBL's justiciability arguments. On ripeness, M-Flex says the complaint specifically alleges that WBL still intends to vote in favor of the Offer following the expiration of the Lock-Up. Moreover, M-Flex contends that, even though the Lock-Up has lapsed, its claim is not moot because a controversy still exists under Delaware law regarding WBL's voting obligations as the controlling stockholder of M-Flex should the Offer later proceed.

III.

A. Personal Jurisdiction

When considering a motion to dismiss for lack of personal jurisdiction under Court of Chancery Rule 12(b)(2), the initial evidentiary burden falls on the plaintiff to show a basis for the court to exercise jurisdiction over a nonresident defendant.[5] To determine whether this burden is met in a particular case, the court employs a two-part analysis. The first inquiry tests whether service of process on the nonresident defendant was authorized by statute. The second inquiry asks whether,

[5] *Capital Group Cos., Inc. v. Armour*, 2004 WL 2521295, at *2 (Del. Ch. Nov. 3, 2004) (citing *Greenly v. Davis*, 486 A.2d 669 (Del. 1984)).

given the particular facts presented to the court, the exercise of jurisdiction over the nonresident defendant would comport with the due process requirement of minimum contacts.[6]

1. The Lock-Up Does Not Provide A Contractual Basis For Personal Jurisdiction Over WBL

The court will first consider the propriety of exercising personal jurisdiction over WBL on the basis of the express consent to jurisdiction clause of the Lock-Up.[7] This examination leads to the conclusion that the court lacks personal jurisdiction over WBL because the dispute here does not reasonably pertain to WBL's performance of its obligations under the Lock-Up.

The jurisprudence of this State is well settled that when a nonresident defendant expressly consents to jurisdiction in Delaware by contract, a due process analysis is not required.[8] Unlike the constraints of subject matter jurisdiction, which flow from either statutory or constitutional limitations on the power of a court, the personal jurisdiction requirement "is based on individual liberty interests . . . and thus can be waived by any legal arrangement that demonstrates a party's expressed or implied consent to jurisdiction."[9] Thus, if the court were to conclude

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[6] *Id.* (citing *LaNuova D & B, S.p.A. v. Bowe Co.*, 513 A.2d 764, 768 (Del. 1986)).
[7] *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 327 (Del. Ch. 2003) (citing *Branson v. Exide Elecs. Corp.*, 625 A.2d 267, 268-69 (Del. 1993)).
[8] *Capital Group*, 2004 WL 2521295, at *2 (citing *Sternberg v. O'Neil*, 550 A.2d 1105, 1109 n.4 (Del. 1988)).
[9] *Chrysler Capital Corp. v. Woehling*, 663 F. Supp. 478, 481 (D. Del. 1987) (citing *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03 (1982)); *see also Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286 (Del. 1999); *Hovde Acquisition, LLC v. Thomas*, 2002 WL 1271681, at *5 n.20 (Del. Ch. June 5, 2002).

that WBL is bound by the consent to jurisdiction clause of the Lock-Up, this case would be properly before the court under Rule 12(b)(2).

To determine whether WBL submitted to the court's jurisdiction, the express terms of the relevant provisions of the Lock-Up will govern. It is hornbook law that the contractual terms themselves both guide and control a court's interpretation of a legally binding agreement when those terms "establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language."[10] If a contract is unambiguous, a court cannot consider extrinsic evidence "to interpret the intent of the parties, to vary the terms of the contract, or to create an ambiguity."[11] Moreover, ambiguity only occurs when the provision in dispute is "susceptible to two *reasonable* interpretations."[12]

Paragraph 7 of the Lock-Up provides:

> This Letter is governed by, and shall be construed in accordance with, Singapore law, and WBL agrees to submit to the non-exclusive jurisdiction of the courts of Singapore; *provided, however*, that the obligations of WBL set forth in paragraph 4.1.2 shall be governed by the laws of the state of Delaware, U.S.A., and WBL agrees to submit to the exclusive jurisdiction of the courts of Delaware with respect to any controversy with respect thereto.

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[10] *Eagle Inds. v. DeVilbiss Health Care*, 702 A.2d 1228, 1232 (Del. 1997) (citing *Rhone-Poulenc v. Am. Motorists Ins.*, 616 A.2d 1192, 1196 (Del. 1992)).
[11] *Id.* (citing *Pellaton v. Bank of New York*, 592 A.2d 473, 478 (Del. 1991)).
[12] *See Simon v. Navellier Series Fund*, 2000 WL 1597850, at *7 (Del. Ch. Oct. 19, 2000) (emphasis in original).

In pertinent part, paragraph 4.1.2 provides that WBL shall:

> appear at any meeting of the stockholders of M-Flex (in person or by proxy) to cause the M-Flex Controlled Shares to be counted as present thereat for the purposes of establishing a quorum; and shall vote (or cause to be voted) all M-Flex Controlled Shares (i) in favor of and to approve the [Offer] and all such matters related to or in connection therewith and otherwise in such manner as may be necessary to implement or effect the [Offer]; and (ii) against any Competing Transaction.

Thus, the question is whether the complaint alleges an actual controversy between M-Flex and WBL with respect to the contractual obligation of WBL to appear at any meeting of M-Flex stockholders and vote its shares in favor of the Offer.

Although the Lock-Up expired by its own terms during the pendency of this suit, the court must assess personal jurisdiction over WBL as of the time the suit was filed.[13] That assessment leads ineluctably to the conclusion that the court has not had such jurisdiction at any point in time, as there was never an actual controversy with respect to WBL's obligations under the Lock-Up.

WBL submitted to the jurisdiction of this court for a specific type of dispute: one relating to its contractual obligation to vote its M-Flex shares *in favor of* the Offer and *against* any other offer. The gravamen of M-Flex's suit here is not to require WBL to perform this covenant but rather to avoid such performance altogether and to require WBL to act contrary to its (now lapsed) contractual

[13] *Freeport-McMoRan, Inc. v. KN Energy, Inc.*, 498 U.S. 426, 428-429 (1991) (per curiam).

undertakings. In bringing such a claim, M-Flex was never suing on the contract. On the contrary, its claim has always been that WBL is required by its fiduciary duties to vote against the proposal regardless of any contractual undertaking.

The irrelevancy of the Lock-Up to M-Flex's claim is also demonstrated by the fact that, even at the time the complaint was filed, M-Flex did not and could not allege that a vote on the Offer would occur before the Lock-Up's December 31, 2006 expiration. Indeed, from the first, M-Flex sought to schedule trial in this matter in January 2007, after the Lock-Up was set to expire by its own terms.

For these reasons, the court is unable to conclude that M-Flex's action was ever one "with respect to" WBL's "obligations" under section 7 of the Lock-Up. Rather, the Lock-Up itself merely provides part of the background factual setting for M-Flex's claim that WBL will, at some unascertainable point in the future, breach its fiduciary duties as a controlling stockholder by voting its M-Flex shares in favor of the Offer. In light of this conclusion, the consent to jurisdiction clause of paragraph 7 of the Lock-Up is not implicated by M-Flex's suit and is unavailable as a means by which to obtain personal jurisdiction over WBL.

2. Delaware's Long-Arm Statute Does Not Provide A Basis For Personal Jurisdiction Over WBL

As an alternative basis for personal jurisdiction, M-Flex argues that Delaware's long-arm statute allows the court to hear its claims against WBL.

However, this argument fails for several reasons and consequently merits little substantive discussion.

First and foremost, specific jurisdiction does not exist under 10 *Del. C.* § 3104(c)(1) or (3). On the present facts, neither the mere ownership of stock in a Delaware corporation nor the execution of a contract with a Delaware corporation constitutes a sufficient "act" or "transact[ion]" within the State for purposes of these statutory provisions.[14]

Second, general jurisdiction is inappropriate under 10 *Del. C.* § 3104(c)(4). That provision is only properly invoked when "a defendant has had contacts with [Delaware] that are so extensive and continuing that it is fair and consistent with state policy to require that the defendant appear here and defend a claim."[15] M-Flex does not allege the existence of such contacts.

Third, M-Flex's complaint does not assert 10 *Del. C.* § 3104 as a ground for jurisdiction. Instead, the complaint relies solely upon the consent to jurisdiction clause of the Lock-Up.

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[14] *See, e.g.*, *In re General Motors (Hughes) S'holder Litig.*, 2005 WL 1089021, at *22 (Del. Ch. May 4, 2005), *aff'd*, 897 A.2d 162 (Del. 2006) ("Delaware law is clear that if the only link between the parent corporation and the alleged wrong is the parent's ownership of stock in the subsidiary, that is insufficient to establish personal jurisdiction . . . [i]f the parent corporation of the Delaware subsidiary, however, actively engages in the negotiation and consummation of the transaction, it has transacted business [for purposes of the long arm statute]."); *Abajian v. Kennedy*, 1992 WL 8794, at *10 (Del. Ch. Jan. 17, 1992) (holding that the signing of a contract does not constitute a sufficient "act" when that contract was negotiated and executed outside the forum state).

[15] *Computer People, Inc. v. Best Int'l Group, Inc.*, 1999 WL 288119, at *7 (Del. Ch. Apr. 27, 1999).

The conclusion that the court lacks personal jurisdiction over WBL fully supports dismissal of the complaint. Nevertheless, the court will briefly discuss the issues of ripeness and mootness presented by the motion.

B. Justiciability

For a court to settle a dispute, the issues presented must be justiciable. The requirement of an "actual controversy" in a given case is satisfied by the existence of four conditions. In *Rollins International, Inc. v. International Hydronics Corp.,*[16] the Delaware Supreme Court addressed these requisites and noted that the courts of this State have adopted the widely accepted doctrines of mootness and ripeness in determining whether an actual controversy is present.[17]

1. M-Flex's Suit Is Moot

The doctrine of mootness counsels that a court should dismiss pending litigation if the allegedly threatened injury no longer exists.[18] Thus, a court

[16] 303 A.2d 660, 662-63 (Del. 1973) (stating that a case presents an "actual controversy" if "(1) it [is] a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it [is] a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy [is] between parties whose interests are real and adverse; (4) the issue involved in the controversy [is] ripe for judicial determination").

[17] Although it is temporally impossible under normal circumstances for a case to be simultaneously moot and unripe, the unique facts here, coupled with the arguments advanced by the plaintiff, require the court to address both of these grounds for dismissal.

[18] *Energy Partners, Ltd. v. Stone Energy Corp.*, 2006 WL 2947483, at *6 (Del. Ch. Oct. 11, 2006) (citing *Cal. Pub. Employee Ret. Sys. v. Coulter*, 2005 WL 107354, at *3 (Del. Ch. Apr. 21, 2005)).

generally will not grant relief if the substance of a dispute disappears due to the occurrence of certain events following the filing of an action.[19]

The alleged controversy surrounding WBL's voting of its M-Flex shares, assuming one ever truly existed in the first place, is now clearly moot. The foundation of the allegedly threatened injury in this case was the Lock-Up. However, the Lock-Up expired on December 31, 2006. M-Flex has not identified any facts that would allow the court to infer that WBL still currently plans to vote its M-Flex shares in favor of the Offer. Additionally, no exception to the mootness doctrine is applicable here.[20] Thus, even under the bald assumption that the complaint alleged an actual controversy at the time it was filed, it no longer does so. Therefore, mootness provides a separate and independent ground on which the court must dismiss M-Flex's complaint.

2. M-Flex's Suit Is Not Ripe

As the Delaware Supreme Court noted in *Rollins*, judicial restraint, even in the face of the declaratory judgment statute,[21] requires that a court not "entertain

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[19] *Id.* (citing *General Motors Corp. v. New Castle County*, 701 A.2d 819, 823 (Del. 1997)).
[20] *See, e.g.*, *General Motors Corp.*, 701 A.2d at 824 (recognizing exception to the mootness doctrine for matters of public importance); *Glazer v. Pasternak*, 693 A.2d 319, 320-21 (Del. 1997) (noting that mootness may not apply if the situation is capable of repetition but is evading review).
[21] 10 *Del. C.* § 6501 *et seq.*

suits seeking an advisory opinion or an adjudication of hypothetical questions . . . ."[22] Generally speaking, an action is not ripe for adjudication when it is "contingent . . . [and requires] the occurrence of some future event before the action's factual predicate is complete."[23] Courts do retain discretion to make a "practical judgment" as to whether an action is ripe.[24] However, when the material facts are not static and litigation in the matter is not immediate and inevitable, a reviewing court should move with great caution and hesitancy and should normally close the courthouse doors to the litigants on the particular matter unless truly extraordinary and exigent circumstances are present.[25]

The factual predicate of this action lacks the element of concreteness for a number of reasons. M-Flex has provided the court with nothing but facially deficient, conclusory allegations to support its economically irrational theory that, even though WBL's responsibilities imposed by the Lock-Up have disappeared, WBL still plans to vote in favor of the Offer. The factual basis of this suit is further weakened because M-Flex's special committee has not yet announced or set a date for the stockholder's meeting to vote on the authorization of new shares pursuant to

[22] 303 A.2d at 662.
[23] *Energy Partners*, 2006 WL 2947483, at *7.
[24] *Id.* (citing *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 480 (Del. 1989)).
[25] *Stroud*, 552 A.2d at 481.

the Offer. Thus, it is literally impossible to predict whether or not WBL will vote for or against the Offer. M-Flex's suit, therefore, is clearly not ripe.[26]

To summarize, this court does not now, and never did, have personal jurisdiction over WBL pursuant to either the contractual provisions of the Lock-Up or Delaware's long-arm statute. Therefore, dismissal of the complaint is appropriate. Further, even assuming for sake of argument that such jurisdiction existed at the time M-Flex filed suit, the court must stay its hand under the doctrines of ripeness and mootness. The court does not address any of WBL's other bases for dismissal.

IV.

For the foregoing reasons, WBL's motion is GRANTED and the complaint is dismissed. IT IS SO ORDERED.

[26] That is not to say, of course, that M-Flex could not sue WBL to enjoin its voting in favor of the Offer at a time when the factual predicate becomes more solidified, say, by the calling of the stockholder meeting. However, as this opinion makes abundantly clear, Delaware is not likely a valid forum to pursue such a suit, given the personal jurisdiction problems with regard to WBL discussed above.