Benihana case brief essay

Behihana of Tokyo, Inc. v. Benihana, Inc. , 906 A. 2d 114 (Del. 2006) Facts: Rocky Aoki founded Benihana of Tokyo, Inc. (BOT), and its subsidiary, Benihana, which own and operate Benihana restaurants in the United States and other countries. Aoki transferred his 100% ownership of BOT to Benihana Protective Trust in 1998 in order to avoid licensing problems stemming from his conviction on insider trading charges. Benihana, a Delaware corporation, had two classes of common stock.

There were 6 million shares of Class A Common Stock, each share of Class A Common Stock had a 1/10th vote, and the holders of Class A Common Stock were entitled to elect 25% of the directors. There were 3 million shares of Common Stock outstanding, each with one vote, and the holders of Common Stock were entitled to elect the remaining 75% of Benihana's directors. BOT owned 50. 9% of all Common Stock and 2% of Class A Common Stock. It was determined that the restaurants in the chain were in need of significant renovation and that the plan would cost $56 million or more.

Fred Joseph, of Morgan Joseph, met with the board of directors and recommended that Benihana issue convertible preferred stock to help finance the project. BFC Financial Corporation was interested in buying the convertible stock. After meeting with John E. Abdo, the principal owner of BFC and an executive committee member of Benihana, Joseph, acting on behalf of Benihana, agreed to a Stock Purchase Agreement and approved the stock issuance. The board met to discuss the purchase, and even after discovering Abdo's involvement with BFC, still approved the transaction.

Aoki filed the action against the Benihana directors arguing that the directors had breached their fiduciary duties by allowing Abdo to negotiate the deal from both sides, and Benihana was not allowed to issue the stock with preemptive rights that would be self dealing which was a breach of the duty of loyalty. Aoki also filed suit against BFC, claiming that the company had aided and abetted the fiduciary violations. The trial court entered in favor of the defendant, holding that Benihana was authorized to issue the preferred stock with preemptive rights, and found that the decision was within the bound of the business judgment rule.

Rule: The rule that the court applied was Section 144 (a), which states as follows: “ The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

Issue: The first issue at hand was if Section 144 provided a safe harbor for interested transactions “ if the material facts as to the director’s relationship or interest and as to the contract or transaction are disclosed or are known the board of directors and the board in good faith authorizes the contract or transaction by the affirmative votes of the majority of the disinterested directors,” and if Abdo should be protected by this because he did not at first disclose that he was negotiating on behalf of BFC.

The second issue was if the Court of Chancery should have reviewed the transaction under an entire fairness standard because Abdo breached his duty of loyalty when he used Benihana’s confidential information to negotiate on behalf of BFC. The third issue is whether or not the board’s primary purpose in approving the transaction was to dilute BOT’s voting control.

Holding: The court rules that Section 144 does provide a safe harbor for interested transactions and that Abdo is protected by that section, that the Court of Chancery did not need to review the transaction under an entire fairness standard, and that the transaction’s primary purpose was not to dilute BOT’s voting control. Reasoning: The court agreed with BOT that Abdo needed to disclose himself as negotiator for BFC, but held the trial court’s ruling because two times after Abdo disclosed himself as negotiator for BFC, the board still ruled in favor of the transaction.

The claim that Abdo breached his duty of loyalty when he used Benihana’s confidential information to negotiated is flawed because the record does not show that Abdo used any confidential information against Benihana. Lastly, the court believed that while the action did dilute BOT’s voting power, the primary goal of the transaction was to successfully finance Benihana’s Construction and Renovation Plan, and not dilution of BOT’s voting power. Criticism: There were no dissenting or concurring opinions written. I don’t really find any problems or controversies with the majority opinion.

I believe it was shady of Abdo to not disclose that he was negotiating on behalf of BFC at first, but given that once he disclosed the information and the board still approved the transaction I do not find much fault. The only thing interesting with the case is the definition of the Duty of Loyalty. Aoki's definition seems to be more of a feeling of betrayal by his company, but it is completely necessary for the board to look out for the good of the corporation, especially after Aoki was convicted of insider trading. Lastly, I believe the decision is sound because the decision matches all of the criteria of Section 144a for a safe harbor.