DAVID JASINOVER	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs.	*	FOR
THE ROUSE COMPANY, ET AL.	*	HOWARD COUNTY
Defendants	*	Case No. 13-C-04-59594

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MEMORANDUM AND ORDER

Before the Court is the Motion for Expedited Discovery filed by Plaintiff David Jasinover, seeking an order permitting him to conduct expedited limited discovery in connection with his Motion for Preliminary Injunction. Both motions were filed on October 18, 2004. Plaintiff, a stockholder of The Rouse Company ("Rouse"), seeks to enjoin the proposed acquisition of Rouse by General Growth Properties, Inc. ("GGP"). The Defendants in the case are Rouse, GGP, and ten members of Rouse's Board of Directors.[1]

On August 20, 2004, Rouse, a publicly-traded company, announced that GGP would acquire it for $67.50 per share through a merger. Rouse asserts that the transaction provides its stockholders a 32 percent premium over the market value of the stock just prior to the announcement. On October 12, 2004, Rouse filed with the Securities and Exchange Commission and disseminated to Rouse stockholders a Definitive Proxy Statement on Schedule 14D-9 ("the Proxy"), urging Rouse's public stockholders to vote their shares in favor of the proposed acquisition.

[1] Plaintiff's original complaint was filed on August 25, 2004. GGP has not been served. The other Defendants are served, and counsel have entered appearances on their behalf. While Plaintiff denominated the Complaint as a class action, he has not moved for class certification under Rule 2-231(c).

Plaintiff finds the Proxy to be inadequate and complains that it:

> suffers from numerous material deficiencies including, most importantly, the omission of any meaningful explanation of why defendants failed to permit other interested parties from making an offer for the Company. The Proxy also fails to disclose material information concerning the fairness opinions defendants received from two financial advisors upon which defendants' purportedly relied in approving the Proposed Acquisition.

Defendant's Motion For Expedited Discovery, p.3.

It is Plaintiff's contention that without these disclosures and the correction of "other materially misrepresented and/or omitted information", Rouse stockholders cannot make a fully-informed decision whether the price being offered by GGP is fair, and thus whether they should vote in favor of the acquisition.

A special stockholder meeting and vote is set for November 9, 2004, and it is represented by Defendants' counsel that closing will take place the next day if the merger is approved.

Defendants argue that expedited discovery should not be allowed in advance of the meeting since the Proxy statement is unusually detailed and comprehensive, fulfilling on its face all SEC and Maryland law requirements, and that Plaintiff has failed to generate any viable issue of non-disclosure that would justify the demanded discovery which includes depositions of the principals.

The Court agrees with Plaintiff that it has the authority in the appropriate case to expedite discovery. Maryland Rule 2-401(b) specifically permits the Court to order that discovery be completed by a specified date or time, and although Maryland Rule 2-411 generally requires an answer to be filed by a defendant prior to the taking of depositions, the Rule further permits the Court to grant a party leave to take depositions at an earlier time but only upon "terms as the court prescribes".

Plaintiff directs the Court to the example set by the highly-respected Delaware Court of Chancery, which deals regularly with issues of acquisitions and mergers, and cites several cases where the Delaware courts have considered expediting discovery in advance of consideration of preliminary injunction proceedings directed at blocking mergers and acquisitions. See, e.g., *American Stores Co. v. Lucky Stores, Inc.*, No. 9766, 1998 WL 909330 (Del. Ch. Apr. 13, 1988); *In Re Int'l Jensen Inc. Shareholders Litig.*, No. 14992, 1996 Del. Ch. Lexis 77 (Del. Ch. July 16, 1996); *Harmony Mill Ltd. P'ship v. Magness*, No. 7463, 1984 Del. Ch. Lexis 419 (Del. Ch. Feb. 14, 1984).

While these examples are instructive and worthy of emulation in an appropriate case, they also reinforce the need for careful judicial scrutiny and oversight to ensure that steps of supposed expedition are legitimate and necessary prior to a court ordering a regimen on litigants that departs from normal procedure.[2] This is

[2] In fact, one of the cases cited by Plaintiff illustrates the need for careful judicial scrutiny. While noting that expedited discovery is "normally routinely granted" in the Court of Chancery when preliminary injunctive relief is sought, Chancellor Jacobs in *In Re International Jensen Inc. Shareholders Litigation*, *supra*, found that expedited discovery should *not* be granted since

particularly the case where, as here, the regimen is being considered before the defending parties have had an opportunity within the time allowed by the Rules to answer or file an appropriate motion, and where one major defendant, GGP, has not been served.

It is against these standards that the Court will weigh the Plaintiff's request for limited expedited discovery and Defendants' opposition to it.

Rouse's 135-page proxy statement is indeed detailed. It contains sections describing the background of the merger, the Board's reasons for the merger, the recommendation of the Board, opinions of two financial advisors, and statements as to interests of certain persons in the merger. The proxy statement also reports in detail on the day-to-day chronology of events leading to the decision to accept GGP's bid and Rouse's dealings with other potential bidders. It also discloses the litigation relating to the merger, including an extensive summary of the claims and allegations raised by Plaintiff in this litigation and related stockholder litigation in Illinois.

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the moving papers failed to articulate a colorable claim of irreparable harm.

Despite the length and detail of the Proxy, Plaintiff asserts that the Board has "misrepresented and/or omitted material information" which will prevent Rouse stockholders from "making a fully-informed decision as to whether to vote their shares in favor of the Proposed Acquisition." Motion For Expedited Discovery, p.11. Plaintiff has focused on his suspicions about the role of Rouse's chairman, CEO and President in favoring GGP over other potential bidders, described in the Proxy as Companies A and B, and an asserted failure by Rouse to include in the Proxy statement sufficient "critical financial information" that was utilized by Rouse's two financial advisors in their valuation analyses.

Plaintiff's concerns would potentially have more force if Plaintiff could establish some credible factual predicate to support his suspicions that the information provided in the Proxy is not accurate or sufficient. In filing his original Motion for Temporary Restraining Order or Preliminary Injunction, Plaintiff did not include any affidavits, although the Rule requires them. Rule 15-504(a). Plaintiff through counsel candidly admits in oral argument that he has no present factual basis to contest any of the statements of fact in the Proxy, but believes that the statements made are either not extensive enough or do not present adequate justifications for why certain actions were taken or not taken. For example, Plaintiff wants to know "why" the Board did not permit the so-called "Company B" to have additional time to make a firm offer prior to Rouse accepting GGP's bid.

Plaintiff notes in footnote 3 of his Motion for Temporary Restraining Order or Preliminary Injunction that his own statement

of facts comes solely from the Proxy filed by Rouse. He offers a detailed deconstruction and exegesis of the document and lists many questions he wants to have answered. He also lists other financial detail that he believes he needs in order to evaluate the transaction.

Plaintiff is certainly free to argue that the Proxy statement on its face contains such inadequacies that it does not fairly inform stockholders of the information needed to make a vote. However, before setting this Court and the other parties on an extraordinary course of rigorous and rushed discovery, it is incumbent on the Plaintiff to make some demonstration that the voyage would likely lead to a worthwhile destination. Plaintiff has not done so.

It is therefore, this __25th___ day of October, 2004,

ORDERED, that the Plaintiff's Motion for Expedited Discovery is denied.

Dennis M. Sweeney
JUDGE

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