

COSTA BRAVA PARTNERSHIP III,  
L.P., et al.

Plaintiffs

v.

TELOS CORPORATION, et al.

Defendants

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Part 20  
\* Case No.: 24-C-05-009296  
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**ORDER**

\_\_\_\_\_ Upon consideration of plaintiffs’ motion for preliminary injunction, defendants’ opposition thereto, plaintiffs’ reply memorandum and the oral arguments presented by counsel for the respective parties on April 16, 2007, it is this 19<sup>th</sup> day of April, 2007, by the Circuit Court for Baltimore City, Part 20, **ORDERED** that plaintiffs’ motion for preliminary injunction is **DENIED**.

Plaintiffs characterized the present motion as one seeking limited relief. They asked the Court to enjoin defendants and their agents from pursuing or closing any sale of Telos’ assets outside the ordinary course of business until May 31, 2007, when two new Class D directors will be elected to the board. Defendants countered that plaintiffs’ request for a preliminary injunction sought extraordinary relief to which they were not entitled under Maryland corporation law or the facts of this case.<sup>1</sup>

Throughout this litigation, plaintiffs have made it clear that they do not trust the

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<sup>1</sup> Even plaintiffs concede that the election of two Class D directors will not permit the ERPS holders to gain control of the board of directors.

directors and officers of Telos Corporation to act either in their best interests, as holders of publicly traded exchangeable redeemable preferred stock (“ERPS”), or in the best interests of the corporation.<sup>2</sup> Plaintiffs insist that the resignation of the directors which occurred last summer and the actions of the current directors in continuing to write off significant losses from its Enterworks subsidiary, in incurring sales and general and administrative expenses that are excessive, and in granting officer bonuses in the face of annual losses are all reflective of the fact that the board of directors is under the control and dominion of John R. C. Porter and John D. Wood, Telos’ majority shareholder and its CEO. The defendants deny these accusations and counter that the current board of directors is comprised of a majority of independent directors, who have a fiduciary obligation to act in the best interests of the shareholders and the corporation and whose business judgment is presumed to serve those purposes under Maryland law.<sup>3</sup>

The plaintiffs point to John R. C. Porter’s proxy agreement with three of the current directors, David Borland’s company sponsored golf membership and Bernard Bailey’s former company’s \$25,000,000 contract with Telos as “raising questions” about the independence of these directors. At this point in the proceedings, however, the Court does not believe that plaintiffs’ “suspicions” concerning the independence of all but one of the current members of the board of directors provide a sufficient basis for the imposition of a preliminary injunction.<sup>4</sup> Compare: *Beam v. Martha Stewart*, 845 A.2d 1040, 1048-1052 (Del. 2004) (stating

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<sup>2</sup> They contend that their lawsuit will benefit the corporation rather than them individually, because it was brought derivatively.

<sup>3</sup> Md. Corps. & Assoc., Code Ann. § 2-405.1

<sup>4</sup> In fact, plaintiffs’ claim for relief is based merely upon a suspicion of a pending sale of Telos’ assets.

that “allegations of mere personal friendship or a mere outside business relationship, standing alone, are insufficient to raise a reasonable doubt about a director’s independence.”) *Id.* at 1050.

Md. Rule 15-502(b) authorizes the court to grant an injunction upon terms and conditions justice may require at any stage of an action. The four factors that the Court must consider were set forth in *Dept. of Transportation v. Armacost*, 299 Md. 392, 404-05 (1984). In this case, plaintiffs have the burden of establishing each of the four factors, which include: (1) the likelihood that the plaintiff will succeed on the merits; (2) the “balance of convenience” determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interests.

Maryland law further states that the “failure to prove the existence of even one of the four factors will preclude the grant of preliminary relief.” *Eastside Vend. Distributors, Inc. v. Pepsi Bottling Group, Inc.*, 396 Md. 219, 241 (2006) (quoting *Fogle v. H&G Restaurant, Inc.*, 337 Md. 441, 456 (1995)).

This Court is of the opinion that Costa Brava’s motion for a preliminary injunction must fail because plaintiffs are unable to establish the likelihood of success on the merits. Despite the dispute between the parties concerning the earlier reluctance of plaintiffs to fill the Class D directorships, defendants are not in violation of any statutory, charter or by-law requirements with respect to the pending election of those directors. Moreover, even if the Court were to assume that there is a transaction pending that may be consummated before May 31,

2007,<sup>5</sup> Maryland corporation law does not permit plaintiffs to challenge such a transaction so long as it is approved by a majority of disinterested directors.<sup>6</sup> Md. Corps. & Assoc., Code Ann. § 2-419. Because plaintiffs are unable to persuade the Court at this point that the current directors lack the requisite independence to consider such a transaction, the Court is not inclined to enjoin defendant from doing so before the election of the Class D directors.

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ALBERT J. MATRICCIANI, JR.  
Judge

cc: All Counsel (via LexisNexis E-Serve)

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<sup>5</sup> See Exhibits 16, 17, and 18 of Exhibit Appendix to Telos Corporation's Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction.

<sup>6</sup> Telos contends that it has reconstituted its Transaction Committee as a committee of the whole Board of Directors.