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United States District Court,
N.D. Texas,
Dallas Division.

CLST HOLDINGS, INC., Plaintiff,
v.
RED OAK PARTNERS, LLC, Red Oak Fund, LP, Pinnacle Partners, LLC, Pinnacle Fund LLLP, Bear Market Opportunity Fund, LP, and David Sandberg, Defendants.

Civil Action No. 3:09–CV–0291–P. | Oct. 13, 2009.

West KeySummary

1 **Securities Regulation** Preliminary Injunction
Company was not entitled to a preliminary injunction barring a company engaging in a stockholder takeover from exercising stockholder's rights at an upcoming stockholder meeting. The company had filed suit against the takeover company alleging violations of the Securities Exchange Act and that its shareholders had been deprived of information needed to determine the true value of their stock. The company argued its shareholders would suffer irreparable harm unless the preliminary injunction was granted, however, the possibly harmed shareholders would have other adequate remedies under the law if harm occurred.

Attorneys and Law Firms

Mark T. Josephs, Andrew D. Graham, Jeremy T. Brown, Jackson Walker, Dallas, TX, for Plaintiff.

Frank Preston Skipper, Jr., Sullivan & Cook LLC, Dallas, TX, Daniel F. Wake, Sander Ingebretsen & Wake, Denver, CO, for Defendants.

Opinion

ORDER

JORGE A. SOLIS, District Judge.

*1 Now before the Court is Plaintiff's Application for Preliminary Injunction, filed July 24, 2009. Defendants filed a Response on August 7, 2009, and a Reply was filed on August 14, 2009. After careful consideration and for the reasons stated below, the Motion is DENIED.

I. Background

CLST Holdings, Inc. ("CLST" or "Plaintiff") is a "micro-cap" company whose common stock is publicly traded on the over-the-counter market and quoted on the "pink sheets." (Defs.' Resp. (p. 2).) From late 2006 through the middle of 2007, CLST's stockholders approved a series of transactions and agreements that would liquidate the CLST's assets and prepare the company for its dissolution. (PL's Br. (p. 2).) In late 2008, David Sandberg ("Sandberg"), the principal decision maker for the Red Oak Group ("Red Oak" and together with Sandberg

"the Defendants"), identified CLST's stock as being undervalued relative to its current cashholdings, and, as part of a plan to take control of CLST, began contacting CLST's largest shareholders in an attempt to purchase CLST stock and/or enter into stock voting agreements (*Id.* (p. 4–8).)

On February 3, 2009, as part of Red Oak's plan to a take control of CLST, Red Oak announced its intention to make a tender offer for up to 70% of CLST's stock. (Defs.' Br. (p. 4).) However, as a result of this announcement, Plaintiff adopted a rights plan that would effectively block Red Oak from acquiring control of the company. (*Id.*) In response to the rights plan, Red Oak announced the termination of its previously announced plan to commence a tender offer. (*Id.* (p. 5).) However, prior to the rights plan becoming effective, and possibly in response to the initial tender offer announcement, large shareholders contacted Red Oak and began selling their CLST shares to Red Oak. (*Id.* (p. 5–6).)

On February 13, 2009, CLST filed this suit claiming that Defendants' actions in attempting to acquire control of CLST had violated Sections 13(d) and 14(d) of the Securities Exchange Act of 1934. On March 13, 2009, CLST announced that it had scheduled its 2009 annual meeting of stockholders for May 22, 2009. (Pl.'s Br. (p. 11).) Shortly thereafter, Red Oak deliver to CLST a notice of director nominations, which disclosed Red Oak's intention to nominated a slate of candidates for election to the CLST board of directors at the 2009 annual meeting. *Id.* CLST, claiming that as Defendants have committed multiple violations of the federal securities laws, seeks a preliminary injunction that would bar Defendants from exercising any stockholder's rights at the upcoming (and rescheduled) September 25, 2009 annual stockholder's meeting. (*Id.* (p. 26).)

II. Legal Standard

Four elements are required for the grant of a preliminary injunction. First, the movant must establish a substantial likelihood of success on the merits. Second, there must be a substantial threat of irreparable injury if the injunction is not granted. Third, the threatened injury to the plaintiff must outweigh the threatened injury to the defendant. Fourth, the granting of the preliminary injunction must not disserve the public interest. *Cherokee Pump & Equip. Inc. v. Aurura Pump,* 38 F.3d 246, 249 (5th Cir.1994).

***2** In addition to this general standard, the 5th Circuit has specifically addressed how the element of "irreparable harm" is met in cases involving violations of the Williams Act.[1] *Gearkart Indus., Inc. v. Smith Int'l Inc.,* 741 F.2d 707 (5th Cir.1984). In *Gearhart,* the 5th Circuit recognized that in crafting the Williams Act "Congress was at extreme pains to avoid tipping the scales either in favor of management or in favor of the person making the takeover bids." *Id.* at 715 (quoting the Supreme Court's decision in *Piper v. Chris–Craft Indus., Inc.,* 430 U.S. 1, 31, 97 S.Ct. 926, 51 L.Ed.2d 124 (1977) (internal quotations omitted).) After identifying investor protection as the sole purpose of the Williams Act, the Court held that an injunction will issue only on a showing of irreparable harm to the interests which the Act seeks to protect. *Id.* The Court concluded that as Congress intended to do no more than give incumbent management an opportunity to express and explain its position, those interests are fully satisfied when the shareholders receive the information required to be filed. *Id.* at 715, 717.

III. Analysis

In asking for Preliminary Injunction, Plaintiff has stated that two ways irreparable harm will occur if the requested relief is not granted. First, Plaintiff asserts that CLST's shareholders will suffer irreparable harm as a result of having to make decisions without full and accurate disclosure of material information. (PL's Br. (p. 22).) Plaintiff argues that without an accurate 13D filing, CLST shareholders' were deprived of information that would assist them in

determining the true value of their stock, and whether or not they wished to remain a shareholder in the midst of a battle for corporate control. (*Id.* (p.23).)

This line of argument, however, has already been rejected by the 5th Circuit. In *Gearhart,* the Court held that an injunction was "an inappropriate and over-drastic course of action" even when shareholders may have sold their stock under a misapprehension created by false 13(d) statements. 741 F.2d at 716. Likewise, the Supreme Court, in another Williams Act case, has rejected a similar line of reasoning, holding that "persons who allegedly sold at an unfairly depressed price have an adequate remedy by way of an action for damages, thus negating the basis for equitable relief." *Rondeau v. Mosinee Paper Corp.,* 422 U.S. 49, 60, 95 S.Ct. 2069, 45 L.Ed.2d 12 (1975).[2]

Plaintiff's second line of reasoning asserts "the failure to grant the requested injunctive relief will cause a substantial risk of irreparable harm because without it the Red Oak Group may be successful in taking control of CLST before a final trial ...." (Pl.'s Br. (p. 24).) This argument must also be rejected. In *Gearhart,* the 5th Circuit was clear that the Williams Act does not support an injunction that is made to rest on the disadvantage created to management's resistance to a takeover. 741 F.2d at 715. In summarizing its rejection of the "irreparable harm" claims" before it, the Court said:

> ***3** The evidence before the district court does not convince us of any harm whatever that the other Gearhart Shareholders will suffer if the GE shares are voted. At most, their votes, combined with others, might produce a majority delivering control of Gearhart to Smith; and while we are sensible that Gearhart would view such an outcome as catastrophic, nothing in the record persuades us to such a view. *Id.* at 716.

Likewise, in this case, the Court is aware that Plaintiff would view a change of control of CLST as "catastophic." However, in light of controlling precedents, this result would not constitute an irreparable harm to the shareholders that the Williams Act is intended to protect. Accordingly, as Plaintiff cannot demonstrate a substantial threat of irreparable injury if the injunction is not granted, there is no need to examine the remaining three elements of the preliminary injunction standard.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's Application for Preliminary Injunction.

IT IS SO ORDERED.

Footnotes

1 The Williams Act refers to legislation passed in 1968 which amended the Securities Exchange Act of 1934 and its regulation of tender offers. The Williams Act includes Sections 13(d) and 14(d) of the '34 Act

2 Plaintiff also argues that an injunction is needed as Defendants' failure to present investors with accurate information continues to this day. (PL's Br. (p. 24).) However, as that allegation is based upon the Plaintiff's determination that Defendants beneficially own 19.05% of CLST stock while Defendants claim to own 22.19% (*Id.* (p. 16)), this Court finds that even if the Plaintiff's calculations are correct, this level of misrepresentation would not create an irreparable harm to shareholders.