



**GRANTED**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ROBERT TERA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2020-0275-JRS
	)	
HC2 HOLDINGS, INC., a Delaware	)	
Corporation, PHILIP A. FALCONE,	)	
WARREN H. GFELLER, ROBERT V.	)	
LEFFLER, JR., LEE S. HILLMAN, and	)	
JULIE TOTMAN SPRINGER,	)	
	)	
Defendants.	)	

**STIPULATION AND [PROPOSED] ORDER OF DISMISSAL**

WHEREAS, HC2 Holdings, Inc. (“HC2” or the “Company”) has two outstanding series of preferred stock: Series A and Series A-2 (the “Preferred Stock”). (Am. Compl. ¶¶ 33, 35) The certificates of designation governing the Preferred Stock (the “Certificates of Designation”) provide that, in the event of a Change of Control, holders of the Preferred Stock (the “Preferred Stockholders”) have the right to require HC2 to redeem the Preferred Stock;

WHEREAS, the Certificates of Designation define a “Change of Control” to include, among other things, “(iii) the obtaining by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of the power (whether or not exercised), other than pursuant to a revocable proxy in favor of the Company’s proposed slate of directors in respect of an annual meeting

or other meeting related to the election of directors, to elect a majority of the members of the Board or more than fifty percent (50% of the Voting Power of the Company” and “(iv) the first day on which a majority of the members of the Board are not Continuing Directors;”

WHEREAS, on March 13, 2020, a stockholder of HC2 filed a preliminary consent solicitation statement seeking, among other things, to replace the six incumbent members of HC2’s board of directors (the “Board”) with a slate of nominees (the “Dissident Slate”) from stockholder Percy Rockdale LLC and affiliates (“Percy Rockdale”) (the “Consent Solicitation”);

WHEREAS, on April 3, 2020, the Company issued a definitive consent revocation statement that stated, among other things, that if the Dissident Slate were elected to the Board and a majority of the incumbent directors were unseated, the Company would be required under the Certificates of Designation to redeem the Preferred Stock, unless a waiver is obtained from a majority of the Preferred Stockholders;

WHEREAS, on April 10, 2020, Plaintiff Robert Tera (“Plaintiff”) commenced the above-captioned class action (the “Action”) on behalf of a putative class of Company stockholders against the Company and certain members of the Board (*i.e.*, Philip A. Falcone, Warren H. Gfeller, Robert V. Leffler, Jr., Lee S. Hillman and Julie Totman Springer (together with the Company, “Defendants”));

WHEREAS, in the Action, Plaintiff (i) alleged, *inter alia*, that the redemption provisions of the Certificates of Designations constituted approvable proxy puts (the “Approvable Proxy Puts”), and the Board was breaching its fiduciary duties by not approving the Dissident Slate for the limited purpose of defusing the Approvable Proxy Puts and by making misleading disclosures regarding the same; and (ii) sought declaratory and injunctive relief;

WHEREAS, also on April 10, 2020, Plaintiff served Defendants with document requests and moved for expedited proceedings in this Action;

WHEREAS, on April 15, 2020, a majority of independent directors of the Board approved the nominees on the Dissident Slate for the limited purpose of constituting Continuing Directors for purposes of the Approvable Proxy Puts;

WHEREAS, on April 17, 2020, HC2 issued a supplement to its definitive consent revocation statement (the “First Supplement”) disclosing (i) the Board’s approval of the nominees on the Dissident Slate as Continuing Directors, (ii) Plaintiff’s position that a Change of Control would not occur under the Certificates of Designation as a result of the Consent Solicitation, (iii) the Company’s view that Plaintiff’s interpretation was reasonable, (iv) that under another change-of-control provision (the “Power-to-Elect Provision”) in the Certificates of Designation, certain Preferred Stockholders might still seek to redeem their Preferred Stock if the Dissident Slate were elected, (v) that the holder

of Series A Preferred Stock entitled to give a waiver agreed not to exercise any right to require the Company to redeem its shares of Series A Preferred Stock as a result of the Consent Solicitation under the Power-to-Elect-Provision, (vi) that the Company was in discussion with the Series A-2 Preferred Stockholder to obtain a similar waiver, and (vii) that Percy Rockdale stated that it intends to engage with the Preferred Stockholders to waive the potential consequences of a Change of Control;

WHEREAS, on April 19, 2020, Plaintiff filed his Amended Verified Class Action Complaint Seeking Injunctive and Equitable Relief alleging, *inter alia*, that the supplemental disclosures regarding the Power-to-Elect Provision were misleading and/or the Power-to-Elect Provision was improper, coercive, unlawful and/or unenforceable;

WHEREAS, on April 20, 2020, the Court granted expedition in this Action;

WHEREAS, on April 21, 2020, HC2 obtained a waiver of the Power-to-Elect Provision from the remaining Series A-2 Preferred Stockholder entitled to give such a waiver. On April 21, 2020, HC2 also issued a second supplemental disclosure (the “Second Supplement,” and, with the First Supplement, the “Supplements”) disclosing that waiver and that no change of control under the Certificates of Designation would occur as a result of the Consent Solicitation;

WHEREAS, Plaintiff's counsel Bernstein Litowitz Berger & Grossmann LLP and Friedman Oster & Tejtel PLLC (together, "Plaintiff's Counsel") and Defendants' counsel have conferred and agree that the need for expedition and that Plaintiff's motion for a preliminary injunction, along with the merits of his case, is moot;

WHEREAS, on April 23, 2020, the parties informed the Court that, in light of the actions taken by Defendants on April 17, 2020 and April 21, 2020, Plaintiff's claims are moot;

WHEREAS, on May 6, 2020, Plaintiff filed a Motion for an Order Awarding Attorneys' Fees and Expenses (the "Fee Application") and Opening Brief in Support of the Fee Application;

WHEREAS, on May 14, 2020, the Company announced that it had reached a resolution of the Consent Solicitation;

WHEREAS, Defendants each has denied, and continues to deny, that he or she committed any breach of fiduciary duty or violation of any other law, or engaged in any of the wrongful acts alleged in the Complaint and Amended Complaint, and expressly maintains that he or she diligently and scrupulously complied with his or her fiduciary and other legal duties, to the extent such duties exist;

WHEREAS, it is hereby stipulated and agreed by the parties, through their undersigned counsel:

1. The Action, including all claims asserted therein, is dismissed in its entirety with prejudice as to Plaintiff only and without prejudice as to all other members of the putative class.

2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a putative class, notice of this dismissal is not required.

3. The Court retains jurisdiction of the Action solely for the purposes of determining the Fee Application.

4. This Stipulation and Order are entered without prejudice to any right, position, claim or defense any party may assert with respect to the Fee Application.

5. Defendants shall file their opposition to the Fee Application on or before June 17, 2020.

6. Plaintiff shall file his reply brief in further support of the Fee Application on or before July 2, 2020.

7. A hearing on the Fee Application will be held on August 11, 2020, at 11:00 a.m.

8. If the parties reach an agreement concerning the Fee Application, they will promptly notify the Court concerning steps for closing the case.

DATED: May 26, 2020

OF COUNSEL:

Mark Lebovitch  
Jacqueline Y. Ma  
**BERNSTEIN LITOWITZ  
& BERGER & GROSSMAN LLP**  
1251 Avenue of the Americas  
New York, New York 10020  
Tel.: (212) 554-1400

Jeremy S. Friedman  
David F.E. Tejtel  
**FRIEDMAN OSTER  
& TEJTEL PLLC**  
493 Bedford Center Road, Suite 2D  
Bedford Hills, New York 10507  
Tel.: (888) 529-1108

*Attorneys for Plaintiff Robert Tera*

**BERNSTEIN LITOWITZ  
& BERGER & GROSSMAN LLP**

/s/ Gregory V. Varallo  
Gregory V. Varallo (ID No. 2242)  
500 Delaware Avenue, Suite 901  
Wilmington, Delaware 19801  
Tel.: (203) 364-3601

*Attorneys for Plaintiff Robert Tera*

**SKADDEN, ARPS, SLATE,  
& MEAGHER & FLOM LLP**

/s/ Edward B. Micheletti  
Edward B. Micheletti (ID No. 3794)  
Jennifer C. Voss (ID No. 3747)  
Sarah R. Martin (ID No. 5230)  
Mary T. Reale (ID No. 6471)  
One Rodney Square  
Wilmington, Delaware 19899-0636  
Tel.: (302) 651-3000

*Attorneys for Defendants HC2  
Holdings, Inc., Philip A. Falcone,  
Warren H. Gfeller, Robert V. Leffler,  
Jr., Lee S. Hillman, and Julie Totman  
Springer*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

---

Vice Chancellor

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Joseph Slights

**File & Serve**

**Transaction ID:** 65656277

**Current Date:** May 28, 2020

**Case Number:** 2020-0275-JRS

**Case Name:** Robert Tera v. HC2 Holdings, Inc., et al.

**Court Authorizer:** Slights, Joseph

---

/s/ **Judge Slights, Joseph**