IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Abbott Laboratories Infant Formula Shareholder Derivative Litigation	Case No. 22 CV 05513 Honorable Sunil R. Harjani

ORDER

Defendants move this Court to reconsider its August 7, 2024 opinion denying in part Defendants' motion to dismiss. For the following reasons, Defendants' motion [147] [148] is denied.

Discussion

The Court assumes familiarity with the facts of this case from its previous opinion. Defendants assert the Court misapprehended three parts of their motion to dismiss. First, Defendants contend the Court misapprehended the Board meeting materials submitted as exhibits. Second, Defendants argue that the *Caremark* claim against Director Claire Babineaux-Fontenot should have been dismissed. Third, Defendants assert the Court misapprehended Defendants' argument to dismiss Count II.

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (quotation omitted). Such motions are generally disfavored and not the appropriate "forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion." *Id.* at 1270.

Initially, Defendants argue that the Court misapprehended the materials submitted with their motion because the corresponding meeting minutes to the presentations cited in their briefs were in separate exhibits. Defendants assert that these minutes show they fulfilled their oversight obligations. However, these meeting minutes do not change the analysis as they provide no additional substantive detail about the Public Policy Committee meetings beyond what was in the presentations discussed in the Court's opinion. The meeting minutes merely summarize the titles of some of the slides into a single sentence list. While some of the minutes appear to have more detail, those sections are largely redacted, indicating that they are not relevant to this case, or reflect

ad hoc reports from management. The Court also cannot infer that the discussions happened as Abbott claims from the often-repeated sentence that: "The Committee asked several questions to which [executive] responded to its satisfaction." While the incorporation-by-reference doctrine permits a court to review documents to ensure that the plaintiff has not misrepresented them or asked for unreasonable inferences, it does not allow a court to weigh evidence, and a plaintiff is still entitled to all reasonable inferences. *Voigt v. Metcalf*, 2020 WL 614999, at *9 (Del. Ch. Feb. 10, 2020). Thus, the Court cannot make the inferences Defendants request from the meeting minutes. As the analysis has not changed, the motion to reconsider on this ground is denied.

Defendants' second argument is that Director Babineaux-Fontenot should have been dismissed from the *Caremark* claim because she did not join the Board until after the events underlying Plaintiffs' claims. Whatever merit this argument may have, Defendants cannot raise it for the first time on a motion to reconsider. *Brooks v. City of Chicago*, 564 F.3d 830, 833 (7th Cir. 2009) ("[A]ny arguments that he raised for the first time in his motion to reconsider are waived."). In their motion to dismiss, Defendants only reference Babineaux-Fontenot in one footnote in their argument on why Count I—a violation of § 14(a) of the Exchange Act—should be dismissed. That Count was dismissed. Defendants cannot now argue why she should have been dismissed from a separate count when that argument could have been made in their original motion. Therefore, the motion to reconsider on this ground is denied.

Lastly, Defendants argue that the Court misapprehended Defendants' argument for why Count II should be dismissed. Defendants contend that they argued that the Defendant Directors were not interested, so their knowledge of the alleged misrepresentations should be imputed on Abbott. This argument fails for two reasons. First, Defendants did not raise this argument in their opening brief on their motion to dismiss, instead only referencing it in a footnote in their reply. "Arguments raised for the first time in a reply brief are waived." *James v. Sheahan*, 137 F.3d 1003, 1008 (7th Cir. 1998). As such, this argument was waived in the motion to dismiss and cannot be raised on a motion to reconsider. Second, Defendants' contention is merely a disagreement with the Court's interpretation of *Ray v. Karris*, 780 F.2d 636 (7th Cir. 1985). Defendants argue that *Ray* requires a plaintiff to allege that the directors were on both sides of the financial transaction to be considered "interested" for the purpose of not imputing knowledge on the company. However, that requirement was not established in *Ray* and is contrary to other case law in the Northern District of Illinois. *See In re Whitehall Jewellers, Inc. S'holder Derivative Litig.*, 2006 WL 468012, at *12 (N.D. Ill. Feb. 27, 2006) (finding the directors were interested because they could not protect the company when they had knowledge of the breaches and did nothing to stop them). Further, the Seventh Circuit's discussion of knowledge in *Ray* dealt with the plaintiffs' knowledge of the alleged fraud. In *Ray*, one of the plaintiffs was a former board member who was presumed to have knowledge of the fraud and there was a strong indication that the alleged deceit was disclosed to the minority shareholders who could have pursued state injunctive remedies at the time, so those plaintiffs could not claim to have been deceived. 780 F.2d at 643. However, *Ray* does not require an allegation that every director have a personal financial stake in the stock repurchase as the only way to allege a director is interested. Here, Plaintiffs allege that Defendants

knew of and were involved in or failed to stop the alleged scheme, which is sufficient to plead that they were interested and that their knowledge of the scheme is not imputed to Abbott.

Conclusion

For the reasons stated above, Defendants' motion to reconsider [147] [148] is denied.

SO ORDERED.

Dated: November 12, 2024

Sunil R. Harjani
United States District Judge