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Case No. 11025-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

OPPORTUNITY PARTNERS L.P.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 11025-VCL
	)	
HILL INTERNATIONAL, INC., DAVID L. RICHTER, CAMILLE S. ANDREWS, BRIAN W. CLYMER, ALAN S. FELLHEIMER, IRVIN E. RICHTER, STEVEN M. KRAMER, GARY F. MAZZUCCO,	)	
	)	
Defendants.	)	

ORDER GRANTING PRELIMINARY INJUNCTION

WHEREAS Article II of the Amended and Restated Bylaws (the "Bylaws") of Hill International, Inc. (the "Company") states in relevant part:

> The annual meeting of stockholders shall be held on such date and at such time as may be fixed by the Board of Directors and stated in the notice of the meeting, for the purpose of electing directors and for the transaction of only such other business as is properly brought before the meeting in accordance with these Bylaws (the "Bylaws").
>
> Written notice of an annual meeting stating the place, date and hour of the meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the annual meeting. . . . In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation.
>
> To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting; provided, however, that in the event that less than seventy (70) days notice or prior public disclosure of the date of the annual meeting is given or made to stockholders, notice by a stockholder, to be timely, must be received no later than the

close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made, whichever first occurs.

Bylaws § 2.2 (the "Stockholder Business Bylaw");

WHEREAS Article III of the Bylaws states in relevant part:

> Nominations of persons for election to the Board of Directors of the Corporation at a meeting of stockholders of the Corporation may be made at such meeting by or at the direction of the Board of Directors, by any committee or persons appointed by the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Article III, Section 3. Such nominations by any stockholder shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting; provided however, that in the event that less than seventy (70) days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder, to be timely, must be received no later than the close of business on the tenth (10th) day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurs.

Bylaws § 3.3 (the "Stockholder Nomination Bylaw");

WHEREAS in its definitive proxy statement for the 2014 annual meeting, the Company stated:

> We anticipate that we will hold our 2015 Annual Meeting of Stockholders on or about June 10, 2015. . . . If you wish to submit a proposal for the 2015 Annual Meeting of Stockholders which will not be included in the [Company's] proxy statement for such meeting, you must submit your proposal no earlier than March 15, 2015 and no later than April 15, 2015.

Ex. B to Defs.' Resp. in Opp'n to Pl.'s Mot.; Compl. ¶ 21;

WHEREAS on April 13, 2015, Opportunity Partners, L.P. (the "Fund") delivered a letter to the Company in which it gave notice of its intent to present two proposals for consideration and two nominees for election to the board of directors at the Company's 2015 annual meeting (the "Annual Meeting");

WHEREAS on April 30, 2015, the Company filed its definitive proxy statement and announced that the Annual Meeting would be held at 9:00 a.m. on Tuesday, June 9, 2015;

WHEREAS on May 5, 2015, the Company took the position that the Fund's letter dated April 13, 2015, did not comply with the Bylaws;

WHEREAS on May 7, 2015, the Fund delivered another letter to the Company in which it gave notice of its intent to offer two different proposals for consideration and two nominees for election at the Annual Meeting (the "Notice");

WHEREAS on May 11, 2015, the Company took the position that the Notice was untimely;

WHEREAS on May 14, 2015, the Fund commenced this action and sought injunctive relief;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. "To obtain a preliminary injunction, [the Fund] must demonstrate: (1) a reasonable probability of success on the merits; (2) that [it] will suffer irreparable injury without an injunction; and (3) that [its] harm without an injunction outweighs the harm to the defendants that will result from the injunction." *C & J Energy Servs., Inc. v. City of Miami Gen. Empls.' and Sanitation Emps.' Ret. Trust*, 107 A.3d 1049, 1066 (Del. 2014). When the relief sought is in the nature of a mandatory injunction, this Court will not order such relief unless the right to be

protected is "clearly established," *id.* at 1071 n.107, and based on undisputed facts or post-trial factual findings. *Id.* at 1053-54.

2. "The bylaws of a Delaware corporation constitute part of a binding broader contract among the directors, officers, and stockholders formed within the statutory framework of the [Delaware General Corporation Law]." *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 939 (Del. Ch. 2013). Accordingly, "bylaws are interpreted using contractual principles." *Id.* at 957. The "'plain, common, or normal meaning of language will be given to the words of a contract unless the circumstances show that in a particular case a special meaning should be attached to them.'" *Nationwide Emerging Managers, LLC v. Northpointe Hldgs., LLC*, 112 A.3d 878, 895 n.65 (Del. 2015) (quoting 11 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 32:3 (4th ed.) (2014)).

3. The Stockholder Proposal Bylaw and the Stockholder Nomination Bylaw (jointly, the "Advanced Notice Bylaws") each state that "in the event that less than seventy (70) days notice or prior public disclosure of the date of the meeting is given or made to stockholders," then stockholders have ten days in which to provide notice to the Company of any proposals or nominees to be considered at the annual meeting. The operative date for determining the time within which stockholders must give notice is the actual date of the meeting.

4. The plain meaning of the term "notice" in the Advanced Notice Bylaws refers to the giving of statutory notice as required by Section 222 of the Delaware General Corporation Law. 8 *Del. C.* § 222. By statute, notice for an annual meeting at which stockholders will vote on the election of directors must be given not less than 10 nor more than 60 days before the date of the meeting. *Id.* By statute, notice could never be given 70 or more days before the

meeting. For the Advanced Notice Bylaws to make sense, the concept of "prior public disclosure" must mean something other than formal statutory notice.

5. The plain language of the reference to "prior public disclosure" contemplates a public filing that states the date of the meeting, but like a notice, it must state the actual date of the meeting. The stockholders must know when to show up so that a specific range of dates for compliance with the Advanced Notice Bylaws can be calculated.

6. The statement in the 2014 proxy materials about the possible future date for the 2015 annual meeting was not a statutory notice, nor did it provide a prior public disclosure of the actual date for the Annual Meeting. It gave an indication of a possible future date.

7. On March 12, 2015, the Company's board of directors met and fixed the time and date of the annual meeting for 9:00 a.m. on Tuesday, June 9, 2015. The first time the Company gave notice or publicly disclosed "the date of the meeting" was in the proxy materials distributed April 30, 2015. That public disclosure came 40 days before the meeting date, thereby triggering the 10-day window for submissions under the Advanced Notice Bylaws. The Company could have triggered the requirement for 60-90 days advanced notice by announcing the specific date of the meeting on March 12, which was 92 days before the meeting date. Or the Company could have announced a specific date earlier. Because the Company waited to announce the specific meeting date, the 10-day window applies.

8. The 2014 proxy statement gave a range of dates for submitting proposals assuming the annual meeting happened "on or about" the anticipated date. Those dates were not binding on the stockholders. The Advanced Notice Bylaws control the timing for stockholder

submissions, and they based the requisite time period off the actual date of the meeting, not a possible future date.

9. The Notice was submitted on May 7, 2015. It was timely for purposes of the Advanced Notice Bylaws. The Company does not dispute that the Notice otherwise complied with the requirements of the Advanced Notice Bylaws. Because the Notice was compliant, the court need not consider any arguments about whether the April 13 letter was compliant.

10. By contending that the Notice was untimely and refusing to permit the Fund to present its proposals and nominees, the Company is violating the plain language of its Bylaws. The undisputed facts clearly establish a reasonable probability of success on the merits of the Fund's claim for breach. Indeed, the undisputed facts are sufficient to support a grant of summary judgment and hence entitle the Fund to mandatory injunctive relief. In light of this holding, the court need not reach any of the arguments about whether the defendants have acted inequitably.

11. The Fund has shown that it will suffer irreparable harm absent injunctive relief. "Courts have consistently found that corporate management subjects shareholders to irreparable harm by denying them the right to vote their shares or unnecessarily frustrating them in their attempt to obtain representation on the board of directors." *Hubbard v. Hollywood Park Realty Enters., Inc.*, 1991 WL 3151 (Del. Ch. Jan. 14, 1991) (quotation marks omitted).

12. The balancing of hardships favors the Fund. "[I]ncumbent directors have no vested right to continue to serve as directors and therefore will suffer no harm if they are defeated. If the will of the stockholders is thwarted, however, there may be considerable hardship to the stockholders and their corporation." *Aprahamian v. HBO & Co.*, 531 A.2d 1204, 1208 (Del. Ch. 1987). The only cognizable factor weighing against injunctive relief is the cost the

Company might incur to postpone the Annual Meeting and re-solicit proxies. That harm is not substantial and can be mitigated by permitting the Company to convene the Annual Meeting for the sole purpose of adjourning it to to later date.

13. The Company is enjoined from conducting any business at the Annual Meeting on June 9, 2015, other than convening the meeting for the sole purpose of adjourning it for a minimum of 21 days. At the adjourned Annual Meeting, the Company shall permit the Fund to present the items of business and nominations set forth in the Notice.

14. As contemplated by Rule 65(d), this injunction is binding upon the parties to this action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise.

15. The injunction is not conditioned on the posting of any security.

Vice Chancellor J. Travis Laster
Dated: June 5, 2015