

Did Tesla Breach its Fiduciary Duty to Shareholders in SolarCity Acquisition?

By Michael Homer | April 3, 2018

On Wednesday, March 28th, 2018, a [Delaware judge allowed lawsuits](#) by Tesla Inc. shareholders against CEO, Elon Musk, and the Tesla Board to move forward over the company's 2016 SolarCity acquisition. Vice Chancellor Joseph Slight of the Delaware Court of Chancery rejected Tesla's motion to dismiss the seven derivative and direct claims brought by Tesla shareholders on behalf of themselves and a putative class of Tesla stockholders. Among the claims, shareholders allege that Musk and the Board breached their fiduciary duties to shareholders in approving the deal to buy SolarCity -- a company on which Musk also served as Chairman.

The [complaint](#) alleges that Musk and the Board did not act in the shareholders' best interests when Tesla, an electric car company, acquired cash-strapped SolarCity, a solar energy company, for \$2.6 billion in June of 2016. At the time, SolarCity was facing serious liquidity challenges. In the three years leading up to the merger, its debt had increased thirteen-fold, totaling \$3.56 billion, its stock value had decreased 64% from February 2015 to February 2016, and it was facing litigation alleging misappropriation of trade secrets and intellectual property. Amidst this liquidity crisis, the shareholders allege that the acquisition amounted to "a bailout" of SolarCity that benefited the Tesla Board members and their families. They contend that Musk used his "his control over the corporate machinery to, among other things, orchestrate Board approval of the Acquisition."

Tesla's legal team moved to dismiss the complaint under the *Corwin* standard, a 2015 Delaware Supreme Court decision holding that "a shareholder vote approving a transaction could effectively free a board from liability claims when the transaction did not involve a controlling shareholder." Tesla's counsel contends that an "overwhelming" majority of shareholders voted to approve the deal. Furthermore, Musk, who owned 22.1% of Tesla stock and 21.9% of SolarCity stock at the time of the acquisition, was not a controlling shareholder.

However, under the *Kahn* standard, courts determine whether a stockholder is a controlling stockholder if they either (1) own more than 50% of shares or (2) own less than 50% but exercise sufficient influence over the corporation to be deemed a "controlling stockholder." Ultimately, the court held that although Musk owned less than 50% of the company, "Musk's voting influence, his domination of the Board during the process leading up to the Acquisition against the backdrop of his extraordinary influence within the Company generally, the Board level conflicts that diminished the Board's resistance to Musk's influence, and the Company's and Musk's own acknowledgements of his outsized influence" all supported Plaintiff's "reasonably conceivable" contention that Musk was a controlling stockholder.

A Tesla spokesperson expressed [disapproval](#) of the ruling and said "it's important to emphasize that this was a motion to dismiss in which the court was required to assume as true all of the allegations that are made in the complaint."



