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2 Stetson J. Advoc. & L. 264 (2015)

Klaassen v. Allegro Dev. Corp.:

Putting the CEO Out to Pasture

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Editor

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I. Introduction

264. Imagine taking a ride in an airplane and, without notice or warning, you are ejected from your seat. Surely you must have some remedy for this action! Not if you are the CEO of a Delaware corporation. The Supreme Court of Delaware recently affirmed the Court of Chancery's ruling that notice is not required before a board of directors ejects its CEO and controlling stockholder.[2]

265. This paper will explore the following question: What are the implications of the Supreme Court of Delaware's ruling under *Klaassen v. Allegro Dev. Corp.* and, since Florida courts rely heavily upon Delaware corporate law to establish their own corporate doctrines, how will the Court's ruling affect Florida corporate law?[3]

II. Setting the Stage: Klaassen v. Allegro Dev. Corp.

A. Creating the Corporation

266. Eldon Klaasen (hereinafter "Klaassen") is the founder and former majority shareholder of common stock of Allegro Development Corporation. In 2007, Klaassen solicited funds

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1 Editor, *Stetson Journal of Advocacy and the Law*. I would like to thank Dr. Tim Kaye for his helpful comments and suggestions on an earlier draft.

2 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035 (2014).

3 Stuart R. Cohn, *Dover Judicata: How Much Should Florida Courts Be Influenced by Delaware Corporate Law Decisions?* 83 Fla. B.J. 20 (2009).

from prospective investors in order to monetize a portion of his holdings in Allegro Development Corporation (hereinafter "Allegro"). Klaassen's solicitation resulted in investments by two entities: North Bridge Growth Equity 1, L.P. and Tudor Ventures III, L.P. (collectively, the "Series A Investors"). The Series A Investors received Series A Preferred Stock of Allegro in exchange for $40 million.[4]

267. Aware of their holdings in Allegro as a five-year investment, the Series A Investors secured guarantees in anticipation of their eventual exit from the company. In accordance with the investment transaction, Klaassen, Allegro, and the Series A Investors entered into a Stockholder's Agreement (hereinafter "the Agreement") and amended and restated both Allegro's Charter and Bylaws, creating the framework by which Klaassen and the Series A Investors would share control of Allegro's Board.[5]

268. The Board consisted of two outside directors, George Simpkins and Raymond Hood (hereinafter "the Outside Directors"), two directors designated by the Series A Investors, Robert Forlenza and Michael Pehl (hereinafter "the Series A Directors") and the CEO, namely Klaassen himself. Neither Klaassen nor the Series A Investors held the majority in the Board. The Outside Directors held the swing votes.[6]

B. Underperformance

269. In 2009, the Series A Directors became concerned about both Allegro's underperformance and Klaassen's managerial abilities. The company was failing to perform as anticipated,[7] missing its 2009 revenue target by 30%. Poor performance continued throughout 2010, and the Series A Directors expressed their desire for a new CEO. The Outside Directors, however, convinced the Series A Directors to continue to support Klaassen as Allegro's CEO.

270. In 2012, frustration with Klaassen grew stronger. Klaassen fired Allegro's Senior Vice President of Sales four days before the end of the company's best sales quarter to date, but had no ready replacement in mind. He also ignored the board's requests to wait until the quarter had ended. On July 19, 2012, at a regularly scheduled board meeting, the Allegro board discussed the Series A Investors' right of redemption, although Klaassen stated that he was not concerned with it. During the board meeting, the Outside and Series A Directors held an Executive Session at which they discussed Klaassen's performance as CEO.

271. After the board meeting, the Outside Directors had a private discussion with Klaassen, during which Hood encouraged Klaassen to compromise with the Series A Investors. Klaassen continued to express the view that he was not concerned with the redemption right because he felt that he had the ability to stonewall the Investors. The Outside Directors

4 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1037–38 (2014).

5 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1038 (2014).

6 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1038 (2014).

7 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1038–39 (2014).

disagreed and reminded Klaassen that, with three director votes, the board could easily terminate him as CEO.[8]

272. By mid-October, the Outside and Series A Directors had decided to replace Klaassen at the regularly-scheduled Board meeting on November 1, 2012. In preparing for Klaassen's removal, the Outside and Series A Directors held two preparatory conference calls where they asked their lawyers to prepare a draft resolution removing Klaassen as CEO. They decided not to forewarn Klaassen that they planned to terminate him, because they were concerned about how Klaassen would react while still having access to Allegro's intellectual property, bank accounts, and employees.

273. The board meeting took place on November 1, 2012, as scheduled. The Outside and Series A Directors met in another Executive Session, where they confirmed their decision to remove Klaassen as CEO. Klaassen then returned to the board meeting, and Pehl informed Klaassen that the board was removing him from CEO and replacing him with Hood. With Klaassen abstaining, the Allegro board voted, effectuating Klaassen's removal, and appointing Hood as interim CEO.

274. After Klaassen's termination, his actions suggested that he had accepted his termination — by, for example, offering to help Hood transition into the CEO position. Later, however, Klaassen started to express dissatisfaction at this turn of events. He began to undermine Hood and, in November, Klaassen sent a detrimental email to ExxonMobil (a major Allegro client), saying that the company was dysfunctional and engaged in a "bitter" shareholder dispute.

275. On June 5, 2013, Klaassen sent a letter to Ducanes, Pehl, and Forlenza, claiming that his removal as CEO was invalid and that he remained CEO. Klaassen then in his capacity as Allegro's majority shareholder, delivered two written consents, which purported to: (i) remove Hood and Simpkins from the Board, (ii) elect Mr. John Brown to the vacant Common Director seat, and (iii) elect Mr. Dave Stritzinger and Mr. Ram Velidi to the Board.[9]

C. The Court of Chancery

276. Additionally, on June 5, 2013, Klaassen filed suit in Delaware with the Court of Chancery[10] against Allegro, Raymond Hood, George Patrich Simpkins, Jr., Michael Pehl, and Robert Forlenza (hereinafter "the Director Defendants"), claiming that:

1. He remained CEO of Allegro, and
2. As a holder of the majority of Allegro's common stock, he represented a majority of Allegro's voting power, and was thus acting validly, through written consent, to (a) remove two of the directors on Allegro's Board, (b) fill those vacancies, and (c) fill a pre-existing vacancy on the board.

8 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1040 (2014).

9 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1042 (2014).

10 Del. Code Ann. tit. 8, §{} 225.

277. The judgment of the Court of Chancery addressed two issues:

1. Whether the Allegro board of directors had validly removed Klaassen from his position as CEO of the company at a regularly scheduled board meeting; and
2. Whether, and to what degree, Klaassen's written consent validly effected corporate action.

278. The court then held that Eldon Klaassen:

1. Could not challenge his removal as CEO;
2. Continues to serve as a director on Allegro's Board;
3. Validly removed defendant Simpkins from the Board, but did not validly remove defendant Hood from the Board;
4. Did not validly fill the vacancy created by Simpkins' removal; and
5. Validly filled a pre-existing vacancy with non-party Brown.[11]

D. Grounds of Appeal

279. On appeal to the Delaware Supreme Court, Klaassen claimed that the Court of Chancery erred in finding that his claim was barred by equitable defenses, specifically arguing that the Director Defendants violated Delaware corporate law by not giving him advance notice of their plan to remove him as CEO and by exercising deception in calling the Board meeting.

280. Klaassen argued that, as a consequence of the Director Defendants' violation of Delaware law, his removal as Allegro's CEO was void, as opposed to voidable, and thus his challenge to his removal was not subject to equitable defenses. Lastly, Klaassen claimed that supposing his removal as CEO was voidable, and not void as he claims, the Court of Chancery erred in ruling that his claim was barred by equitable defenses.[12]

281. The Delaware Supreme Court divided Klaassen's challenges into two separate claims:

1. The lack of advance notice given to Klaassen of the Board's plan to terminate him; and
2. The use of deception in carrying out that plan.

282. In regards to Klaassen's first claim, the issue presented to the Court was:

> [W]hether Klaassen's claim — that the Director Defendants were required to give him advance notice of their plan to remove him as CEO at the November 1 Board meeting — is cognizable under Delaware law.[13]

11 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1042 (2014).

12 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

13 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

283. Klaassen's second claim presented two issues to the Court: first, "whether Klaassen's deception-based claim is subject to equitable defenses," and second, "if so, whether that claim is barred by the doctrines of laches and/or acquiescence."[14]

E. The Holding

284. The Court concluded that Klaassen's first claim was not cognizable under Delaware law.

285. So far as his second claim was concerned, the Court held that "to the extent that Klaassen's claim may be cognizable, it is equitable in nature," because "Klaassen's removal as CEO was . . . voidable and subject to the equitable defenses of laches and acquiescence," while "the Court of Chancery properly found that Klaassen acquiesced in his removal as CEO, and is therefore barred from challenging that removal."[15]

III. Delaware: The Corporate King

A. Delaware Law before Klaassen

286. *Klaassen* raises issues involving multiple aspects of Delaware corporate law, specifically, notice of board meetings, removal of officers, and the power vested in a board to run the business and affairs of a corporation. Additionally, this case raises issues regarding equitable principles of law.

287. Delaware corporate law is well established on the question of notice requirements. Directors *are* required to be given notice of *special* board meetings so that, without due notice, all acts done at such a meeting are void. There is, however, no notice requirement for regular board meetings. It thus follows that there can be no requirement to give directors advance notice of the purpose of a regular board meeting. The Court in *Klaassen* strengthened this long-standing Delaware law by expressly holding that an officer can be removed at a regular board meeting without notice.[16]

288. While notice requirements are firmly grounded in Delaware corporate law, there appears to be tension between a principle of equity and statutory law.[17] It is a cornerstone of Delaware corporate law that the "business and affairs of every corporation . . . shall be managed by or under the direction of a board of directors . . ."[18]

14 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

15 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1037 (2014).

16 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

17 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035 (2014).

18 Del. Code Ann. tit. 8, §{} 141.

289. However, Delaware case law has created a principle of equity that causes friction with this statute. This principle of equity holds that the congruence of two roles in one person as a controlling shareholder and a director, often referred to as a "super director," justifies giving that super director advance notice of the purpose of a board meeting.

290. For the purposes of this principle, it is key that one person holds both roles, as neither status alone would justify giving notice. But where one person does hold both roles, the Court of Chancery in Delaware had previously ruled, in *Adlerstein v. Wertheimer*, that where no notice is given with the purpose of preventing a super director from exercising his or her contractual rights to put a halt to the other directors' scheme, that purpose is inequitable.[19]

291. An additional area of Delaware corporate law without firm grounding is the distinction between void and voidable acts effectuated by a board of directors. While the distinction between void and voidable acts has been previously established,[20] noteworthy Delaware case law has blurred this distinction.

> The essential distinction between voidable and void acts is that the former are those which may be found to have been performed in the interest of the corporation but beyond the authority of management, as distinguished from acts which are *ultra vires,* fraudulent or gifts or waste of corporate assets.[21]

292. Accordingly, a plaintiff's claim involving voidable acts is subject to equitable defenses. The blurring of this long-standing distinction occurs in four notable Court of Chancery decisions: *Koch*, *VGS*, *Adlerstein*, and *Fogel*.[22] Recognizing the distinction between void and voidable, and how it has been translated into case law, is extremely important, because Klaassen based his claim on the opinions of these four precedents. The Delaware Supreme Court ultimately found that the authors of those opinions "may have been less than precise in their use of the terms 'void' and 'voidable.'"[23]

293. The opinions in these cases state that "board action carried out by means of deception is *per se* void, not voidable."[24] This contradicts the previously-stated distinction between void and voidable acts. The distinction between these different types of acts is of great importance, because voidable acts are subject to equitable defenses, while void acts are not.

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19 *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 at *9 n.28 (Del. Ch. 2002).

20 *Hoch v. Alexander*, CIV. A. 11-217-RGA, 2013 at *1, *6 (D. Del. July 2, 2013); *Adams v. Calvarese Farms Maint. Corp., Inc.*, CIV.A. 4262-VCP, 2010 at *1, *8 (Del. Ch. Sept. 17, 2010); *Moore Bus. Forms, Inc. v. Cordant Holdings Corp.*, CIV.A. 13911, 1998 at *1, *9 (Del. Ch. Feb. 4, 1998); *Nevins v. Bryan*, 885 A.2d 233, 245 (Del. Ch. 2005) (quoting *Michelson v. Duncan*, 407 A.2d 211, 218-219 (Del. 1979).

21 *Klaassen v. Allegro Dev. Corp.,* 106 A.3d 1035, 1046 (2014), quoting *Michelson v. Duncan*, 407 A.2d 211, 218–19 (1979); *VGS, Inc. v. Castiel*, C.A. 17995, 2004 at *1 (Del. Ch. Aug. 31, 2000); *Fogel v. U.S. Energy Sys., Inc.*, Civ. A. No. 3271-CC, 2007 at *1 (Del. Ch. Dec. 13, 2007).

22 *Stearn v. Koch*, 628 A. 2d 44 (Del. 1993); *VGS Inc. v. Castiel*, C.A. No. 17995, 2000(Del. Ch. Apr. 22, 2004); *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 (Del. Ch. Jan. 25, 2002); *Fogel v. U.S. Engery Sys. Inc.*, C.A. No. 3271-CC, 2007 (Del. Ch. Dec. 13, 2007).

23 *Klaassen v. Allegro Dev. Corp*., 106 A.3d 1035, 1047 (2014).

24 *Klaassen v. Allegro Dev. Corp*., 106 A.3d 1035, 1047 (2014).

B. Delaware Law after Klaassen

294. The Delaware Supreme Court's ruling in *Klaassen* will impact Delaware law extensively. In *Klaassen*, the Court solidified the law on notice requirements, made an unwavering distinction between void and voidable acts, including making a correction to past cases that misused the term, partially overruled two prominent Delaware cases,[25] and distinguished Delaware case law.[26]

295. The implications of *Klaassen* are far reaching, affecting corporate law within and outside of the state of Delaware.[27] However, the Court did not address the tension between advance notice owed to a super director, whether based on equity or statutory law, explaining that addressing this tension was not required to resolve Klaassen's appeal.

296. This was, perhaps, a missed opportunity. An authoritative ruling by the Delaware Supreme Court is necessary to dispose of the tension between the equitable notice requirement for a super director and the statutory principle of board management of a corporation,[28] as these two notions create great tension in Delaware corporate law, in a state where principles of equity are held to an extremely high standard.

297. In furtherance of his notice claim, Klaassen asserted that four decisions from the Court of Chancery

> establish the rule that a director who also is a shareholder or officer of a corporation is entitled to advance notice of any matter to be considered at a board meeting, that may affect that director's specific interests.[29]

298. The Delaware Supreme Court made clear that Klaassen misstated this rule. *Koch, Adlerstein,* and *Fogel* all involved disputed board actions that occurred at special board meetings, and therefore did not support Klaassen's notice claim. Additionally, *VGS* is factually distinguishable from Klaassen because it involved actions within a limited liability company.[30]

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25 *Stearn v. Koch*, 628 A. 2d 44 (Del. 1993); *Fogel v. U.S. Energy Sys. Inc.*, C.A. No. 3271-CC, 2007 at *1 (Del. Ch. Dec. 13, 2007).

26 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035 (2014).

27 *Mullen v. Acad. Life Ins. Co.*, 705 F.2d 971, 974 n.3 (8th Cir. 1983).

28 Del. Code Ann. tit. 8, §{} 141.

29 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1044 (2014), referring to *Stearn v. Koch*, 628 A. 2d 44 (Del. 1993); *VGS Inc. v. Castiel*, C.A. No. 17995, 2000(Del. Ch. Apr. 22, 2004); *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 (Del. Ch. Jan. 25, 2002); *Fogel v. U.S. Engery Sys. Inc.*, C.A. No. 3271-CC, 2007 (Del. Ch. Dec. 13, 2007).

30 *Stearn v. Koch*, 628 A. 2d 44 (Del. 1993); *VGS Inc. v. Castiel*, C.A. No. 17995, 2000 at *1 (Del. Ch. Apr. 22, 2004); *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 at *1 (Del. Ch. Jan. 25, 2002); *Fogel v. U.S. Engery Sys. Inc.*, C.A. No. 3271-CC, 2007 at *1 (Del. Ch. Dec. 13, 2007).

299. As noted previously, directors are not entitled to notice of regular board meetings. Consequently, directors are not entitled to notice of the purpose or agenda of a regular board meeting. In its opinion, the court reinforced this long-standing law, while at the same time distinguishing Delaware precedent from *Klaassen*. In *Klaassen*, the Delaware Supreme Court has made it clear that directors can remove an officer at a regular board meeting without notice.[31] The implication is that if a board wishes to terminate an officer, it can simply do so at a regular board meeting. There is no legal requirement to give notice to that officer that he will be terminated at the board meeting, nor notice that the purpose of the meeting is his termination.

300. Additionally, the Court held that Allegro's Bylaws did not override Delaware's default rule regarding notice.[32] Here, the court puts forth that if Allegro's Bylaws had a provision to override the default rule on notice, Klaassen could potentially have a successful claim. An implication of this acknowledgment is that corporations will include in their bylaws provisions to override the default rule on notice requirements.

301. Suggestions for this provision should state that corporate officers can only be terminated at special board meetings. This would have the effect of requiring notice to that officer. A further suggestion would be an exception to the default rule: if an officer is going to be terminated at a regular meeting, that officer is entitled to notice of the meeting itself and/or the purpose of that meeting.

302. Challenging his removal, Klaassen relied heavily on *Adlerstein*, arguing that as a principle of equity, he was required to be given notice of the board meeting at which he was terminated.[33] The Delaware Supreme Court took the opportunity to clearly distinguish *Adlerstein* from *Klaassen*.[34]

303. In *Adlerstein*, a board approved the issuance of blank check preferred stock to an outside investor at a special meeting, with the stock's purpose to give the outside investor voting power in order to oust Adlerstein from the board. Adlerstein, CEO and controlling shareholder of the company, was not given advance notice that the board's purpose in issuing the preferred stock was to destroy his voting power.

304. In *Adlerstein*, the court found he "had an equitable right to (i) receive advance notice of the other directors' plans and (ii) decide whether to exercise his contractual power as a stockholder to prevent the board from taking action." The court further held that the actions taken at the special meeting must be vacated because the board's failure to give Adlerstein advance notice amounted to "trickery"[35] and prevented Adlerstein from exercising his rights as majority stockholder to pre-empt the board's plan and remove those directors.[36]

31 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

32 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1045 (2014).

33 *Alderstein v. Weirtheimer*, C.A. No. 19101, 2002 (Del. Ch. Jan. 25, 2002).

34 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035 at n. 61 (2014).

35 *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 at *9, *11 (Del. Ch. Jan. 25, 2002).

36 *Klaassenv. Allegro Dev. Corp.*, 106 A.3d 1035 at n. 61. Compare with *Stearn v. Koch*, 628 A. 2d 44, 737–738 (Del. 1993), where the Court found that Stearn could have protected himself by exercising his right to

305. *Adlerstein* can be factually distinguished from *Klaassen* in that in the former case, the board sought to remove Adlerstein as a director, and then to remove him from the company in his capacity as Chairman and CEO.[37] In accordance with Delaware law, a director must be removed by a shareholder vote.[38]

306. Adlerstein, by holding a majority of the company's voting power, presented an issue for the board. To oust him, the board developed a plan to create Class C Stock, through the issuance of blank-check preferred, which is a stock whose designation is fixed by the Board of Directors instead of the certificate of incorporation.[39] The board would then grant all of the Class C Stock to an outside investor, thereby giving the investor voting power to vote Adlerstein off the board.[40] In contrast, Allegro's Board sought only to terminate Klaassen in his capacity as CEO of the company, not to remove him as a director. The Director Defendants, determining Klaassen was unfit to continue as CEO of Allegro, only sought to remove him as CEO, and the Director Defendants did so validly.[41]

307. In *Klaassen*, the Delaware Supreme Court declares regretfully that "in writing" *Koch*, *VGS*, *Adlerstein*, and *Fogel*, "the authors may have been less than precise in their use of the terms 'void' and 'voidable.'" The Delaware Supreme Court recognized that "In *Fogel* and *Koch*, for example, the court stated that where deception is employed in the course of a board meeting, any action taken thereat is 'void.'" Mistakenly, the four mentioned opinions describe use of deceptive tactics surrounding a board meeting as "void" while acknowledging that said "void" deceptive action is remediable. In actuality, a remediable action is voidable, and not void. With great significance, the Delaware Supreme Court, in reaching its decision on Klaassen's claims, overrules both *Koch* and *Fogel* "[t]o the extent that those decisions can fairly be read to hold that board action taken in violation of an equitable rule is void."[42]

308. Klaassen challenged his removal from the position of CEO "as a violation of 'generally accepted notions of fairness.'"[43] His claim, being equitable in nature, was susceptible to equitable defenses, and was defeated by the Defendant Directors' equitable defenses, specifically the doctrine of acquiescence:

> Acquiescence arises where a complainant has full knowledge of his rights and the material facts and
>
> (1) remains inactive for a considerable time; or
>
> (2) freely does what amounts to recognition of the complained of act; or

remove a director if he had seen the draft resolutions calling for his removal prior to the board meeting.

37 *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 at *1 (Del. Ch. Jan. 25, 2002).

38 Del. Code Ann. tit. 8, §{} 141(k).

39 *Robert M. Bass Grp., Inc. v. Evans*, 552 A.2d 1227, 1233 n.16 (Del. Ch. 1988).

40 *Adlerstein v. Wertheimer*, No. 19101, 2002 at *2, 9 (Del. Ch. Jan. 25, 2002).

41 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

42 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1047 (2014).

43 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1046 (2014).

> (3) acts in a manner inconsistent with the subsequent repudiation, which leads the other party to believe the act has been approved.[44]

IV. Florida: Feeling The Effects of Klaassen

A. The Relevant Florida Law

309. Florida corporate law can be compared to and distinguished from Delaware corporate law. Florida's corporate notice requirements are firmly rooted in statutory law:

> (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.[45]

310. Under Florida corporate law, a regular board meeting can be held without notice of the purpose of the meeting unless the corporation's articles of incorporation or bylaws provide otherwise. This is in line with Delaware law, as the Delaware Supreme Court has ruled that officers can be terminated at regular board meetings without notice of the termination as the purpose of the meeting.[46] Distinguishable from Delaware corporate law, Florida corporate law does not have recognized tension with equitable principles regarding notice requirements.

311. Florida's requirements and duties for a corporate board are as follows:

> All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement . . . [47]

312. This statute is consistent with Delaware's corporate law, vesting the powers and discretion in running the business and affairs of a corporation in a board of directors.[48]

313. Florida law is also established on a board's ability to remove officers: "A board of directors may remove any officer at any time . . . " This aspect of Florida's corporate law further highlights the power and discretion vested in a board to run the business and affairs of a corporation, and further highlights the board's ability to remove officers at a regular board meeting without notice.[49]

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44 *NTC Grp., Inc. v. W. Point-Pepperell, Inc.*, CIV. A. 10665, 1990 at *1, *5, (Del. Ch. Sept. 26, 1990).

45 Fla. Stat. §{} 607.0822.

46 *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (2014).

47 Fla. Stat. §{} 607.0801.

48 Compare with 8 Del. C. §{} 141 (2014).

49 Fla. Stat. §{} 607.0801; Fla. Stat. §{} 607.0842.

B. The Implications of Klaassen for Florida Law

314. Based on Florida's current corporate law and Delaware's influence on it, I foresee the following implications for Florida corporate law.

315. On notice requirements for board meetings, I see the implications for Florida being essentially the same as the implications for Delaware. If a board wants to terminate an officer, such as a CEO, the board will do so at a regular board meeting. The advantage of this implication lies with the board of directors. Unless a corporation's articles of incorporation or bylaws provide otherwise, a CEO-director lacks essentially any protection in regards to notice of his removal. This is a great disadvantage to a super director, who has the power to trump a board's removal actions, but cannot use his power, as the law states that a board is not required to give him notice, thus preventing him from exercising his power.[50]

316. This leads to another implication: I anticipate that corporations will add limitations on officer removal to their articles of incorporation and bylaws. These limitations could include limiting the board's ability to terminate an officer only if notice of the purpose of the meeting at which termination will occur is given. A limitation that termination can only occur at special meetings would be fruitless, as under Florida corporate law notice of the purpose of special board meetings is not required. However, this limitation would not be fruitless if the corporation's articles of incorporation or bylaws supplemented that notice of the purpose of special meetings is required.[51]

317. Conversely, corporations may choose to ignore adding limitations to their articles and bylaws, as these limitations may conflict with the power vested in the board of directors to run the business and affairs of a corporation.[52]

V. Conclusion

318. Delaware corporate law is ever evolving, and extremely influential on Florida corporate law. Through the Supreme Court's decision in *Klaassen v. Allegro Dev. Corp.*, the Court has solidified, clarified, or overruled existing Delaware corporate law. Though the Court extensively analyzed Delaware statutory law, case law, and principles of equity, clarification is needed to address the tension between equitable notice requirements for a super director and the very foundation of Delaware corporation law: that a corporation is managed under the direction of its board of directors.

50 See *Adlerstein v. Wertheimer*, C.A. No. 19101, 2002 at *9 (Del. Ch. Jan. 25, 2002).

51 Fla. Stat. §{} 607.0822.

52 Fla. Stat. §{} 607.0801. Compare the tension between Delaware's equitable principles and Del. Code Ann. tit. 8, §{} 225.