

## Eighth Circuit: Affirms the Dismissal of a Securities Fraud Action Against a Major Retailer for Failure to Allege Scienter

04.28.20



(Article from *Securities Law Alert*, April 2020)

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On April 10, 2020, the Eighth Circuit affirmed the dismissal of a securities fraud action alleging that a major retailer and several of its executives made misstatements concerning the company's ultimately unsuccessful foray into the Canadian market. *In re Target Corp. Sec. Litig.*, 2020 WL 1814268 (8th Cir. 2020) (Kobes, C.J.). The Eighth Circuit determined that "[n]othing in the complaint makes a 'compelling' case for fraud." Rather, the court found "the more compelling inference" is that the company's executives "did not understand the magnitude of the problems they faced" with the Canadian stores.

### Background

Between March and November of 2013, the company opened 124 new stores in Canada, and also "developed new supply chain and information technology infrastructure to support them." The company's "decision to develop these new systems proved disastrous," as its "new inventory forecasting software provided inaccurate demand forecasts and employees did not understand how to use it." The company's "other systems compounded these problems," leading to "some shelves sitting empty and others overflowing with inventory." In January 2015, the company "announced plans to shutter its Canadian stores." Plaintiffs subsequently brought suit alleging that defendants "misled investors by understating the seriousness of the problems with" the company's Canadian operations by "overstating their ability to correct" the problems and "making unrealistic projections about the profitability of the Canadian stores." The court granted defendants' motion to dismiss, and plaintiffs appealed.

### Plaintiffs Failed to Allege that the Individual Defendants Knew the Statements Were False When Made

The Eighth Circuit found that "none" of plaintiffs' allegations satisfied the scienter requirement. For example, plaintiffs challenged a March 2013 statement by the company's CFO representing that the company had achieved "all" of its "objectives" with respect to building the technology for its Canadian operations. Plaintiffs contended that at the time the CFO made this statement, defendants knew or recklessly disregarded "systemic problems . . . in [the company's] supply chain IT systems." The Eighth Circuit noted that plaintiffs offered "no particularized explanation of how or when [the company's] executives learned this statement was false." The court emphasized that it "disregard[s] 'blanket' or 'catch-all' assertions of scienter."

Plaintiffs also challenged statements representing that the company was “tuning” its Canadian technology systems, on the grounds that defendants “actually knew more drastic action was needed.” The Eighth Circuit found that the complaint did “not show” that the executives were aware that their “tuning” efforts would fail, and emphasized that the Private Securities Litigation Reform Act (“PSLRA”) “does not allow pleading fraud by hindsight.”

The Eighth Circuit found that “[t]he strongest, but still insufficient, allegation” concerned the company’s May 2014 representation that the longer the Canadian stores had been open, the better they were performing. Plaintiffs alleged that defendants must have known that this statement was false because in August 2014, the company “revealed that same-store sales had fallen more than 11% in Canada over the previous year.” The Eighth Circuit stated that “financial deterioration alone is not enough to show fraud.” The court explained that “the apparent incongruity” between the May 2014 statement and the August 2014 financial results was not sufficient to “show that the May 2014 statement was necessarily false, let alone that [company] executives knew it was false.”

**The Individual Defendants’ Stock Sales Did Not Give Rise to an Inference of Scienter**

The Eighth Circuit also found defendants’ stock sales insufficient to raise an inference of scienter. The court explained that while “insider stock sales can be probative of motive, they are not inherently suspicious and become so only when the level of trading is so dramatically out of line with prior trading practices at times calculated to maximize the personal benefit from undisclosed inside information.” In the case before it, plaintiffs “allege[d] that the individual defendants sold 10-20% of their shares during the class period.” The court noted that it has “found sales of up to 32% of an individual’s stock not inherently suspicious.” The court also found it significant that “[t]he bulk of the sales were made early in the class period and provide no motive for defrauding investors in the following months.”

**The District Court Did Not Err in Denying Leave to Amend**

The Eighth Circuit found “no abuse of discretion” in the district court’s denial of plaintiffs’ motion for leave to amend. The Eighth Circuit noted that while “the amended complaint added color and detail to the investors’ allegations, it still failed to allege that [company] executives knew that they were making false statements.” The Eighth Circuit found that the new allegations in the amended complaint were “perfectly consistent with the narrative that [the company] had serious problems that none of its executives understood.”

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