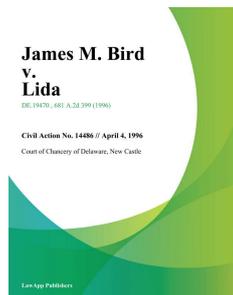


# BEAULD.COM Ebook and Manual Reference

## JAMES M BIRD V LIDA EBOOKS 2019



Author: New Castle Court of Chancery of Delaware

Realese Date: Expected @@expectedReleaseDate@@

Presented is a motion to dismiss a shareholder's complaint seeking an order requiring his corporation to pay his attorney a fee. Plaintiff is James Bird, a shareholder of Lida, Inc., a Delaware corporation. His complaint alleges that the effort of Mr. Bird's legal counsel has directly lead to the conferring of a substantial, quantifiable financial benefit upon the corporation. According to the complaint, the benefit was conferred by investigation and analysis of a possible claim against certain directors of the company arising from leases between the company and entities in which the directors are interested. It is alleged that following a pre-suit demand upon the board, pursuant to Rule 23.1 of this court's rules, the board renegotiated certain of those leases, which resulted in the realization of financial benefits with a present value in excess of \$600,000. Because the board acted upon plaintiff's demand in a manner satisfactory to plaintiff there was no reason to file the derivative lawsuit that stood behind the demand. The board however declined to pay plaintiff's expenses or an attorneys' fee in connection with the demand. This suit was then filed seeking an order requiring such payment. Defendant asserts that the complaint fails to state a claim upon which relief may be granted. It claims, first, that this court lacks subject matter jurisdiction, since this suit seeks only a money judgment. Second, defendant asserts that Delaware law does not recognize a right of action for the reimbursement of investigation fees and expenses in the absence of litigation, the termination of which affords to the court a recognized opportunity to award costs when established factors are satisfied. Third, defendants assert that even if our law does recognize a cause of action of this sort, plaintiff's complaint shows that he could not have filed a meritorious derivative complaint, since he could not satisfy the contemporaneous ownership rule of 8 Del.C. § 327; thus, they say, he could not have been awarded a fee if the derivative suit was filed; and therefore should not be awarded a fee here, where no suit was ever filed. Lastly, it is asserted that fees cannot be awarded to a non-Delaware attorney by this court for services involving Delaware law. 1

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