

COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter of Westmoreland Coal Company v. Entech, Inc.

100 N.Y.2d 352, 794 N.E.2d 667, 763 N.Y.S.2d 525 (2003) · Decided July 1, 2003

SUMMARY

The New York Court of Appeals considered whether objections to asset values in a closing date certificate under a stock purchase agreement were subject to an accountant-based purchase price adjustment procedure or constituted claims for breach of representations and warranties. The court held that objections concerning accounting treatment, estimates, assumptions, or asset values common to the interim and closing financial statements were indemnification claims subject exclusively to litigation, and it reversed and remitted the matter for evaluation of the individual objections.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Read, J.; Chief Judge Kaye; Judge Smith; Judge Ciparick; Judge Rosenblatt; Judge Graffeo; Judge Read
JURISDICTION	New York
DECIDED	July 1, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Westmoreland commenced a proceeding under CPLR 7601 to compel Entech to submit disputes concerning the closing date certificate to an independent accountant under the stock purchase agreement's purchase price adjustment provisions. Supreme Court granted the petition, and the Appellate Division affirmed. Entech appealed to the Court of Appeals.
STANDARD OF REVIEW	De novo interpretation of the written stock purchase agreement and its allocation of disputes between the purchase price adjustment process and litigation under the indemnification provisions.
PRECEDENTIAL VALUE	published precedential opinion of the New York Court of Appeals
PARTIES	Entech, Inc. v. Westmoreland Coal Company

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QUESTIONS PRESENTED

1. Whether objections to asset values in the closing date certificate based on alleged noncompliance with GAAP, consistently applied, fell within the stock purchase agreement's purchase price adjustment procedure for resolution by an independent accountant.
2. Whether those objections instead constituted claims for breach of representations or warranties subject to the agreement's exclusive indemnification and litigation provisions.

HOLDINGS

1. Objections concerning accounting conventions, estimates, assumptions, or asset values common to both the interim financial statements and the closing date certificate did not fall within the purchase price adjustment procedure; they were claims for breach of representations or warranties.
2. Claims that the closing date certificate's asset values failed to comply with GAAP, consistently applied, could be pursued only through litigation under the agreement's exclusive indemnification remedy, not through the independent-accountant process.

KEY QUOTATIONS

“Reading the Agreement as a harmonious and integrated whole, we conclude that Westmoreland's objections related to accounting conventions, estimates, assumptions or asset values common to both the interim financial statements and the closing date certificate unambiguously fall within the Agreement's indemnification provisions, not its purchase price adjustment provisions.” (at 358)

“Westmoreland's objections related to noncompliance with GAAP are, in fact, claims for breach of a representation or warranty.” (at 360)

FACTUAL BACKGROUND

Westmoreland acquired all outstanding stock of several coal-mining subsidiaries from Entech under a stock purchase agreement that established a baseline net asset value and provided for a closing date certificate. Westmoreland objected to numerous asset values in the certificate, asserting that they were not calculated in accordance with GAAP consistently applied, and sought a substantial purchase price adjustment. The agreement contained both an independent-accountant procedure for specified purchase price adjustments and an indemnification provision making litigation the exclusive remedy for breaches of representations or warranties.

PROCEDURAL HISTORY

Supreme Court ordered the parties to select a mutually acceptable independent accountant to resolve Westmoreland's objections to the closing date certificate. The Appellate Division affirmed, holding that the purchase price adjustment provisions required material objections to be submitted to the independent accountant. The Court of Appeals reversed and remitted the matter to Supreme Court for evaluation of Westmoreland's individual objections in conformity with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to Supreme Court, New York County, for evaluation of Westmoreland's individual objections in conformity with the Court of Appeals' opinion.

CASES CITED

- Empire Props. Corp. v. Manufacturers Trust Co., 288 N.Y. 242, 248 (1942)
- 296 A.D.2d 317, 317 (1st Dep't 2002)

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