SUPREME COURT OF DELAWARE

Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.

817 A.2d 160 (Del. 2002) · No. No. 372, 2001 · Decided October 11, 2002

SUMMARY

The Delaware Supreme Court held that a limited partnership agreement may establish contractual fiduciary duties substantially mirroring traditional entire-fairness duties. It affirmed liability for the general partner and related parties arising from an improper resale of partnership units that increased the general partner's control, but held that the damages calculation failed to account for a control premium. The court remanded for consideration of an appropriate remedy, including rescission, rescissory damages, sterilization of voting rights, or another method of accounting for the control premium.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Veasey, Chief Justice; Walsh, Justice; Holland, Justice; Berger, Justice; Hartnett, Justice (Retired), sitting by designation
JURISDICTION	Delaware
DECIDED	October 11, 2002
DOCKET	No. 372, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal by Gotham and cross-appeal by the general partner, its corporate parent, and affiliated directors from a Court of Chancery judgment finding a breach of contractually created fiduciary duties, imposing joint and several liability, and awarding damages with compound prejudgment interest instead of rescission.
STANDARD OF REVIEW	The Supreme Court reviewed interpretation of written agreements and Delaware law de novo, the award of compound interest de novo as a question of Delaware law, and the Court of Chancery's fashioning of remedies for abuse of discretion; factual findings were reviewed for clear error.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Delaware
PARTIES	Gotham Partners, L.P. v. Hallwood Realty Partners, L.P., Hallwood Realty Corporation, The Hallwood Group Incorporated, Anthony J.

Gumbiner, William L. Guzzetti

TOPICS

partnership law · breach of fiduciary duty · duty of loyalty · equitable relief · appellate procedure

PRACTICE AREAS

limited partnership law · fiduciary duty · contract remedies · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the Odd Lot Resale was governed by the partnership agreement's provisions imposing contractual fiduciary duties of entire fairness or by the provision granting the general partner authority to issue units.
2. Whether Hallwood Group, Gumbiner, and Guzzetti could be held jointly and severally liable for aiding and abetting the general partner's breach of contractually created fiduciary duties.
3. Whether the Court of Chancery had discretion to award compound prejudgment interest.
4. Whether rescission was legally required or otherwise warranted despite Gotham's delay in seeking that remedy.
5. Whether the Court of Chancery abused its discretion by calculating damages without accounting for the control premium created by the transaction.

HOLDINGS

1. The Odd Lot Resale was a resale of existing partnership units, not an issuance of new units, and therefore was governed by the partnership agreement provisions requiring fair price and fair dealing and an independent Audit Committee review.
2. Although Hallwood Group, Gumbiner, and Guzzetti could not be sued for breach of the partnership agreement because they were not parties to it, they could be held jointly and severally liable for aiding and abetting the general partner's breach of the contractual fiduciary duties.
3. The Court of Chancery had discretion to award compound prejudgment interest and did not abuse that discretion by compounding interest monthly.
4. Rescission is not automatically required for a serious breach or breach of a contractual fiduciary duty; the Court of Chancery has discretion to deny rescission when the plaintiff unjustifiably delays seeking it, provided that the court orders a reasonable alternative remedy.
5. The Court of Chancery abused its discretion by awarding damages without accounting for the control premium resulting from the Odd Lot Resale and by failing to address the applicability of rescissory damages.

KEY QUOTATIONS

> *"In this appeal, we hold that a limited partnership agreement may provide for contractually created fiduciary duties substantially mirroring traditional fiduciary duties that apply in the corporation law."* (at 163-164)

> *"The Partnership is entitled to receive, at a minimum, what the Partnership units sold to HGI would have been worth at the time of the Odd Lot Resale if the General Partner had complied with the Partnership Agreement."* (at 177-178)

FACTUAL BACKGROUND

Hallwood Realty Partners was a Delaware limited partnership whose sole general partner was wholly owned by Hallwood Group Incorporated, which already held 5.1 percent of the partnership units. Through a reverse split, option plan, and primarily the Odd Lot Offer and Resale, Hallwood Group acquired additional units and increased its ownership to approximately 29.7 percent, thereby solidifying control over the partnership. The Odd Lot Resale was presented as a resale of existing listed units, although the partnership did not form the contractually required independent Audit Committee, conduct a market check, or obtain reliable financial analysis demonstrating fair terms. Gotham, a limited partner holding approximately 14.8 percent of the units, delayed seeking rescission for nearly two years while the market price increased.

PROCEDURAL HISTORY

Gotham first pursued a books-and-records action and then filed a derivative action challenging the Odd Lot Offer and Resale, Reverse Split, and Option Plan. On summary judgment, the Court of Chancery sustained contractual fiduciary-duty claims and dismissed traditional fiduciary-duty claims because the partnership agreement supplanted common-law fiduciary principles. After trial, the court held the defendants liable for the Odd Lot Resale but awarded approximately $3.4 million in damages and compound interest rather than rescission. The Supreme Court affirmed the liability rulings and discretion to deny rescission and award compound interest, but reversed the damages calculation and remanded for an adequate remedy accounting for the control premium.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The Court of Chancery must determine how the Odd Lot Resale would have been consummated if the defendants had complied with the partnership agreement's entire-fairness provisions, including what price the Audit Committee would have approved if it had known the transaction would solidify HGI's control. It must then reconsider and award an appropriate combination of remedies, including rescissory damages, sterilization of voting rights, rescission, or another method accounting for the control premium. Jurisdiction was not retained.

CASES CITED

- Gotham Partners, L.P. v. Hallwood Realty Partners, L.P., 795 A.2d 1 (Del. Ch. 2001)
- Schock v. Nash, 732 A.2d 217 (Del. 1999)

- Rapid-American Corp. v. Harris, 603 A.2d 796 (Del. 1992)
- Elf Atochem North America, Inc. v. Jaffari, 727 A.2d 286 (Del. 1999)
- Sonet v. Timber Co., 722 A.2d 319 (Del. Ch. 1998)
- Boxer v. Husky Oil Co., 429 A.2d 995 (Del. Ch. 1981), aff'd, 483 A.2d 633 (Del. 1984)
- Wallace v. Wood, 752 A.2d 1175 (Del. Ch. 1999)
- Fitzgerald v. Cantor, 1999 WL 182573 (Del. Ch.)
- Summa Corp. v. Trans World Airlines, Inc., 540 A.2d 403 (Del. 1988)
- Brandin v. Gottlieb, 2000 WL 1005954 (Del. Ch.)
- Onti, Inc. v. Integra Bank, 751 A.2d 904 (Del. Ch. 1999)
- Smith v. Nu-West Indus., 2001 WL 50206 (Del. Ch.), aff'd, 781 A.2d 695 (Del. 2001)
- Gaffin v. Teledyne, Inc., 1990 WL 195914 (Del. Ch.), aff'd in part and rev'd in part on other grounds, 611 A.2d 467 (Del. 1992)
- Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983)
- International Telecharge, Inc. v. Bomarko, Inc., 766 A.2d 437 (Del. 2000)
- Ryan v. Tad's Enterprises, Inc., 709 A.2d 682 (Del. Ch. 1996)
- Thorpe v. CERBCO, Inc., 676 A.2d 436 (Del. 1996)
- Oliver B. Cannon & Son, Inc. v. Dorr-Oliver, Inc., 336 A.2d 211 (Del. 1975)
- McNeil v. McNeil, McNeil v. McNeil, 798 A.2d 503 (Del. 2002)
- Cede & Co. v. Technicolor, Inc., 634 A.2d 345 (Del. 1993)
- Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985)
- Blum v. Kauffman, 297 A.2d 48 (Del. 1972)
- Paramount Communications Inc. v. QVC Network, Inc., 637 A.2d 34 (Del. 1993)
- Stroud v. Milliken Enterprises, Inc., 552 A.2d 476 (Del. 1989)
- White v. Panic, 783 A.2d 543 (Del. 2001)
- Meinhard v. Salmon, Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928)
- Massachusetts Indemnity & Life Insurance Co. v. Dresser, 306 A.2d 213 (Md. 1973)
- Local 248 UAW v. Natzke, 153 N.W.2d 602 (Wis. 1967)