SUPREME COURT OF THE STATE OF DELAWARE

The Williams Companies, Inc. v. Energy Transfer Equity, L.P.

159 A.3d 264 (Del. 2017) · No. No. 330, 2016 · Decided March 23, 2017

SUMMARY

The Delaware Supreme Court affirmed the Court of Chancery's judgment in a dispute over a merger agreement between The Williams Companies, Inc. and Energy Transfer Equity, L.P. The court held that the agreement's commercially reasonable efforts and reasonable best efforts covenants imposed affirmative obligations, and that once a breach was established, the breaching party would bear the burden of proving that the breach did not materially contribute to the failure of a closing condition. Because the Court of Chancery found that ETE's conduct did not materially contribute to tax counsel's good-faith refusal to issue the required Section 721 opinion, and because ETE was not estopped from terminating the agreement, the judgment was affirmed.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Vaughn, Justice, for the Majority; Strine, Chief Justice; Holland, Justice; Valihura, Justice; Vaughn, Justice; Seitz, Justice
JURISDICTION	Delaware
DECIDED	March 23, 2017
DOCKET	No. 330, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Delaware Court of Chancery's denial of Williams's request for declaratory and injunctive relief concerning ETE's termination of a merger agreement.
STANDARD OF REVIEW	The Supreme Court reviews the Court of Chancery's conclusions of law de novo and its factual findings with deference.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The Williams Companies, Inc. v. Energy Transfer Equity, L.P., Energy Transfer Corp LP, ETE Corp GP, LLC, LE GP, LLC, Energy Transfer Equity GP, LLC

TOPICS

breach of contract · contract interpretation · conditions precedent · appellate procedure · standard of review

PRACTICE AREAS

contract law · corporate law · mergers and acquisitions · tax law · appellate procedure

QUESTIONS PRESENTED

1. Whether the merger agreement's commercially reasonable efforts and reasonable-best-efforts covenants imposed affirmative obligations to take reasonable steps to obtain the required tax opinion and consummate the merger.
2. Whether, once a breach of those covenants is established, the breaching party bears the burden of proving that the breach did not materially contribute to the failure of the closing condition.
3. Whether ETE was equitably estopped from terminating the merger agreement based on its representation that it knew of no fact reasonably expected to prevent tax-free treatment under Internal Revenue Code § 721(a).

HOLDINGS

1. Covenants requiring commercially reasonable efforts and reasonable best efforts to obtain the tax opinion and consummate the merger impose affirmative obligations to take all reasonable steps to solve problems and complete the transaction, not merely a negative obligation to refrain from obstructing performance.
2. Once a breach of a covenant is established, the breaching party bears the burden of proving that the breach did not materially contribute to the failure of the transaction or closing condition.
3. ETE was not equitably estopped from terminating the merger agreement because the record did not establish that ETE knew of the later-developed tax theory when it made the representation or that it withheld a known fact from Williams.

KEY QUOTATIONS

> *"These provisions placed an affirmative obligation on the parties to take all reasonable steps to obtain the 721 opinion and otherwise complete the transaction."* (272-273)

> *"The Court of Chancery erred here by focusing on the absence of any evidence to show that ETE caused Latham to withhold the 721 opinion."* (273)

> *"We agree that once a breach of a covenant is established, the burden is on the breaching party to show that the breach did not materially contribute to the failure of the transaction."* (273-274)

FACTUAL BACKGROUND

Williams and ETE entered into a two-step merger agreement under which ETE would pay $6.05 billion and receive 19% of a transaction entity, while that entity would transfer Williams's assets to ETE for ETE partnership units. Closing was conditioned on ETE's tax counsel issuing an opinion that the asset transfer should qualify as tax-free under Internal Revenue Code § 721(a), and the agreement required commercially reasonable and reasonable-best efforts to obtain the opinion and consummate the transaction. After a severe decline in the energy market reduced the value of ETE's units, ETE raised a tax concern regarding whether part of the cash consideration could be attributed to the asset transfer; ETE's counsel then declined to issue the required opinion.

PROCEDURAL HISTORY

Williams filed actions in the Court of Chancery challenging ETE's conduct in connection with a merger agreement and the failure to obtain a tax opinion required as a closing condition. The actions were litigated together, and the Court of Chancery held a two-day trial, rejected Williams's breach-of-covenant and equitable-estoppel arguments, and denied injunctive relief. The Delaware Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hexion Specialty Chemicals, Inc. v. Huntsman Corp., 965 A.2d 715 (Del. Ch. 2008)
- SV Investment Partners, LLC v. ThoughtWorks, Inc., 37 A.3d 205 (Del. 2011)
- Bloor v. Falstaff Brewing Corp., 601 F.2d 609 (2d Cir. 1979)
- WaveDivision Holdings, LLC v. Millennium Digital Media Systems, LLC, 2010 WL 3706624 (Del. Ch. Sept. 17, 2010)
- Waggoner v. Laster, 581 A.2d 1127 (Del. 1990)
- Wilson v. American Insurance Co., 209 A.2d 902 (Del. 1965)

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