SUPREME COURT OF THE STATE OF DELAWARE

# Chicago Bridge & Iron Company N.V. v. Westinghouse Electric Company LLC and WSW Acquisition Co., LLC

Chicago Bridge & Iron Co. N.V. v. Westinghouse Electric Co. LLC and WSW Acquisition Co. LLC, 166 A.3d 912 (Del. 2017) · No. No. 573, 2016 · Decided June 28, 2017

## SUMMARY

The Delaware Supreme Court reversed the Court of Chancery in a dispute between Chicago Bridge & Iron Company N.V. and Westinghouse Electric Company LLC and WSW Acquisition Co., LLC. The court held that the purchase agreement required the closing payment and closing statements to comply with GAAP and that the independent auditor's authority extended to disputes concerning the objections statement and closing statement. The opinion was revised on June 28, 2017, to correct a mathematical error.

## CASE DETAILS

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| COURT | Supreme Court of the State of Delaware |
| WRITING FOR THE COURT | Leo E. Strine, Jr.; Leo E. Strine, Jr., Chief Justice; Karen L. Valihura, Justice; Collins J. Seitz, Jr., Justice |
| JURISDICTION | Delaware |
| DECIDED | June 28, 2017 |
| DOCKET | No. 573, 2016 |
| DISPOSITION | reversed |
| PROCEDURAL POSTURE | Chicago Bridge & Iron appealed the Court of Chancery's judgment on the pleadings in a dispute concerning the interpretation and application of a purchase agreement's post-closing purchase-price adjustment provisions. |
| STANDARD OF REVIEW | The Supreme Court reviews de novo the Court of Chancery's grant of a motion for judgment on the pleadings. Judgment on the pleadings is proper only when no material issue of fact exists and the movant is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE | Published Delaware Supreme Court opinion |
| PARTIES | Chicago Bridge & Iron Company N.V. v. Westinghouse Electric Company LLC, WSW Acquisition Co., LLC |

## TOPICS

contract interpretation | contracts | commercial litigation | appellate procedure | standard of review

## PRACTICE AREAS

contract law | commercial litigation | appellate procedure

## QUESTIONS PRESENTED

1. Whether the purchase agreement unambiguously required the Closing Payment Statement and Closing Statement to comply with GAAP.
2. Whether the Independent Auditor's authority under the True Up process extended to all disputes relating to the Objections Statement and Closing Statement, including disputes concerning historical accounting practices.
3. Whether judgment on the pleadings was appropriate to enforce the asserted contract interpretation.

## HOLDINGS

1. The unambiguous language of the Purchase Agreement required the Closing Payment Statement and Closing Statement to be GAAP compliant.
2. The Independent Auditor's authority extended to all disputes related to the Objections Statement and Closing Statement.
3. Judgment on the pleadings was reviewed de novo and was not a proper basis for enforcing the narrower contract interpretation adopted below.

## KEY QUOTATIONS

> *"the unambiguous language of the Purchase Agreement required the Closing Payment Statement and Closing Statement to be GAAP compliant, and that the Independent Auditor's authority extends to all disputes related to the Objections Statement and Closing Statement."* (at 26)

> *"A motion for judgment on the pleadings may be granted only when no material issue of fact exists and the movant is entitled to judgment as a matter of law."* (at 26)

> *"[J]udgment on the pleadings . .. is a proper framework for enforcing unambiguous contracts because there is no need to resolve material disputes of fact."* (at 26)

## FACTUAL BACKGROUND

Chicago Bridge & Iron and Westinghouse entered into a purchase agreement containing post-closing purchase-price adjustment procedures. The agreement required preparation of a Closing Payment Statement and a Closing Statement, with disputes submitted to an Independent Auditor through the True Up process. The parties disputed whether the statements had to comply with GAAP and whether the Independent Auditor could resolve disputes involving historical accounting practices and changes to net working capital.

## PROCEDURAL HISTORY

The Court of Chancery entered judgment on the pleadings in favor of Westinghouse and WSW Acquisition. Chicago Bridge & Iron appealed to the Delaware Supreme Court, which reviewed the judgment de novo and reversed.

### DISPOSITION

reversed

### CASES CITED

- Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P., 624 A.2d 1199, 1204-1205 (Del. 1993)
- NBC Universal v. Paxson Communications Corp., 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005)

### OPINION

PER CURIAM.

SUPREME COURT OF DELAWARE LEO E. STR|NE. JR. THl-: RENAlssANcE Cl-:NTRE ¢H.gjugncg June 28, 2017 405 N. KiNG smE¢-:r, surrz 505 WlLM|NGTON. DELAWARE 19801 David E. Ross, Esquire Kevin Abrams, Esquire Garrett B. Moritz, Esquire John M. Seaman, Esquire Ross Aronstam & Moritz LLP Abrams & Bayliss LLP 100 South West Street, Suite 400 20 Montchanin Road, Suite 200 Wilmington, DE 19801 Wilrnington, DE 19807 RE: Chz'cago Bridge & Iron Company N. V. v. Westinghouse Electric Company LLC and WSWAcquisz'tion Co., LLC No. 573, 2016 Dear Counsel: The Opinion issued on June 27, 2017 in this matter has been revised to correct the mathematical error on page 26 which Was brought to our attention by Mr. Moritz.

The Opinion is being refiled today as reflected on the new cover page. The corrected pages are enclosed for your convenience. We are sorry for any inconvenience this may Chief Justice LESJr/ptp Enclosures cc: Honorable Karen L. Valihura Honorable Collins J. Seitz, Jr. IN THE SUPREME COURT OF THE STATE OF DELAWARE ACQUISITION CO., LLC, Defendants Below, Appellees.

CHICAGO BRIDGE & IRON § COMPANY N.V., § No. 573, 2016 § Plaintiff Below, § Court Below: Court of Chancery Appellant, § of the State of Delaware § v. § § C.A. No. 12585 W`ESTINGHOUSE ELECTRIC § COMPANY LLC and WSW § § § § § Subrnitted: May 3, 2017 Decided: June 27, 2017 Revised: June 28, 2017 Before STRINE, Chief]ustice; VALIHURA and SEITZ, Justices. Upon appeal from the Court of Chancery.

REVERSED. David E. Ross, Esquire, Garrett B. Moritz, Esquire, Ross Aronstarn & Moritz LLP, Wilmington, Delaware; Theodore N. Mirvis, Esquire (argued), Jonathan M. Moses, Esquire, Kevin S. Schwartz, Esquire, Andrew J.H. Cheung, Esquire, Cecilia A. Glass, Esquire, Bita Assad, Esquire, Wachtell, Lipton, Rosen & Katz, New York, New York, for Plaintiff Below, Appellant, Chicago Bridge & Iron Company N.V.

Kevin G. Abrarns, Esquire, John M. Seaman, Esquire, Abrarns & Bayliss LLP, Wilmington, Delaware; Peter N. Wang, Esquire (argued), Susan J. Schwartz, Esquire, Yonaton Aronoff, Esquire, Douglas S. Heffer, Esquire, for Defendants Below, Appellees, Westinghouse Electric Company LLC and WSW Acquisition Co., LLC, STRINE, Chief Justice: the unambiguous language of the Purchase Agreement required the Closing Payment Statement and Closing Statement to be GAAP compliant, and that the Independent Auditor’s authority extends to all disputes related to the Objections Statement and Closing Statement.

This appeal followed. II. This Court reviews de novo the Court of Chancery’s grant of a motion for judgment on the pleadings54 A motion for judgment on the pleadings may be granted only when no material issue of fact exists and the movant is entitled to judgment as a matter of law.55 “[J]udgment on the pleadings... is a proper framework for enforcing unambiguous contracts because there is no need to resolve material disputes of fact.”§6 A. Chicago Bridge argues that the bulk of Westinghouse’s changes to the Net Worl<ing Capital A.mount fall outside the scope of matters that the lndependent Auditor may resolve under the True Up because they implicate Stone’s historical accounting practices.

According to Chicago Bridge, the vast majority of Westinghouse’s claims-or around $1.93 billion57_really constitute alleged 54 Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P., 624 A.2d 1199, 1204 (Del. 1993). 55 Id. at 1205. 56 NBC Universal v. Paxson Commc ’n.s' Corp., 2005 WL 103 8997, at *5 (Del. Ch. Apr. 29, 2005). 57 See supra note 44.