SUPREME COURT OF THE STATE OF DELAWARE

El Paso Pipeline GP Company, L.L.C. v. Brinckerhoff

152 A.3d 1248 (Del. 2016) · No. No. 103, 2016 · Decided December 20, 2016

SUMMARY

The Delaware Supreme Court reversed the Court of Chancery in a derivative action arising from conflicted dropdown transactions involving a publicly traded master limited partnership. The court held that the plaintiff's claims were derivative, belonged to the partnership under the limited partnership agreement, and were transferred to the surviving entity in a subsequent merger, extinguishing the plaintiff's derivative standing. The court concluded that the plaintiff's remedy was to challenge the fairness of the merger rather than continue the derivative action.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Valihura, Justice; Strine, Chief Justice; Holland, Justice; Vaughn, Justice; Rennie, Judge, sitting by designation
JURISDICTION	Delaware
DECIDED	December 20, 2016
DOCKET	No. 103, 2016
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal and cross-appeal from the Court of Chancery's post-trial liability and standing rulings in consolidated derivative litigation concerning conflicted dropdown transactions by a master limited partnership.
STANDARD OF REVIEW	De novo review applies to the legal question of standing.
PRECEDENTIAL VALUE	published, precedential Delaware Supreme Court decision
PARTIES	El Paso Pipeline GP Company, L.L.C., El Paso Corporation, Douglas L. Foshee, John R. Sult, Ronald L. Kuehn, Jr., D. Mark Leland, Arthur C. Reichstetter, William A. Smith, James C. Yardley v. Peter R. Brinckerhoff, Trustee of the Peter R. Brinckerhoff Rev. Tr. U/A DTD 10/17/97

TOPICS

limited liability companies · partnership law · shareholder derivative suits · appellate procedure · commercial litigation

PRACTICE AREAS

limited liability companies · partnership law · corporate law · fiduciary duty · appellate procedure · commercial litigation

QUESTIONS PRESENTED

1. Whether Brinckerhoff's claim for breach of the limited partnership agreement was direct, derivative, or dual-natured under the Tooley framework.
2. Whether the merger transferred the Partnership's derivative claim to the surviving entity and extinguished Brinckerhoff's standing to continue the action.
3. Whether the same loss of standing required dismissal of Brinckerhoff's cross-appeal concerning the Spring Dropdown.

HOLDINGS

1. The claim was exclusively derivative because the alleged harm was suffered by the Partnership, the contractual duty of good faith was owed to the Partnership, and any recovery would belong to the Partnership. The claim was not dual-natured because the transaction did not increase the General Partner's or Parent's control or affect the limited partners' voting rights.
2. The merger extinguished Brinckerhoff's standing to continue the derivative action because the Partnership's claim passed by operation of law to the surviving entity.
3. The cross-appeal was dismissed as moot because the same loss of derivative standing applied to the Spring Dropdown claims.

KEY QUOTATIONS

> *"We find that the derivative plaintiff's claims were and remain derivative in nature."* (1250)

> *"We conclude that the plaintiff lost standing to continue this derivative action when the merger closed—both as to the direct appeal and cross-appeal."* (1250-1251)

> *"Because Brinckerhoff's claim sounds in breach of a contractual duty owed to the Partnership, we employ the two-pronged Tooley analysis to determine whether the claim "to enforce the [Partnership's] own rights must be asserted derivatively" or is dual in nature such that it can proceed directly."* (1260)

> *"The Merger therefore extinguished Brinckerhoff's standing to assert these claims."* (1265)

FACTUAL BACKGROUND

El Paso Pipeline Partners, L.P. was a publicly traded Delaware master limited partnership controlled by El Paso Corporation through its general partner, El Paso Pipeline GP Company, L.L.C. The Partnership entered into

Spring and Fall Dropdown transactions in which assets were transferred from the Parent to the Partnership through conflicted transactions approved by conflicts committees. Brinckerhoff brought derivative claims alleging that the Fall Dropdown caused the Partnership to overpay, and the Court of Chancery found a $171 million injury to the Partnership. Before the court ruled on the merits, Kinder Morgan acquired the Partnership in a merger, and Brinckerhoff did not challenge the merger itself.

PROCEDURAL HISTORY

Brinckerhoff filed derivative actions challenging the Spring and Fall Dropdown transactions, and the actions were consolidated in the Court of Chancery. The Court of Chancery granted summary judgment for defendants on the Spring Dropdown and left only a breach-of-the-limited-partnership-agreement claim concerning the Fall Dropdown for trial. After trial, the court found the General Partner liable and awarded $171 million in damages, then denied defendants' motion to dismiss for lack of standing after the Partnership merged into Kinder Morgan. The Delaware Supreme Court reversed, holding that the claim was derivative and that the merger extinguished Brinckerhoff's standing; it dismissed the cross-appeal as moot.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered. The Court of Chancery's decision recognizing post-merger standing was reversed, and the cross-appeal was dismissed as moot.

CASES CITED

- Lewis v. Anderson, 477 A.2d 1040 (Del. 1984)
- Ark. Teacher Ret. Sys. v. Countrywide Fin. Corp., 75 A.3d 888 (Del. 2013) (en banc)
- Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031 (Del. 2004)
- NAF Holdings, LLC v. Li & Fung (Trading) Ltd., 118 A.3d 175 (Del. 2015)
- Gentile v. Rossette, 906 A.2d 91 (Del. 2006)
- Gerber v. EPE Holdings, LLC, 2013 WL 209658 (Del. Ch. Jan. 18, 2013)
- Parnes v. Bally Entm’t Corp., 722 A.2d 1243 (Del. 1999)
- Schoon v. Smith, 953 A.2d 196 (Del. 2008) (en banc)
- Ala. By-Prods. Corp. v. Cede & Co., 657 A.2d 254 (Del. 1995)
- Culverhouse v. Paulson & Co., 133 A.3d 195 (Del. 2016)
- Feldman v. Cutaia, 951 A.2d 727 (Del. 2008)
- Loral Space & Commc’ns, Inc. v. Highland Crusader Offshore Partners, L.P., 977 A.2d 867 (Del. 2009)
- Gatz v. Ponsoldt, 925 A.2d 1265 (Del. 2007)
- Norton v. K-Sea Transp. Partners L.P., 67 A.3d 354 (Del. 2013) (en banc)
- Allen v. Encore Energy Partners, L.P., 72 A.3d 93 (Del. 2013) (en banc)

- Citigroup Inc. v. AHW Inv. P’ship, 140 A.3d 1125 (Del. 2016)