SUPREME COURT OF THE STATE OF DELAWARE

Energy Transfer, LP v. The Williams Companies, Inc.

Energy Transfer · No. No. 391, 2022 · Decided October 10, 2023

SUMMARY

The Delaware Supreme Court affirmed the Court of Chancery's rulings arising from the failed merger between Energy Transfer and The Williams Companies. The Court held that Energy Transfer was not entitled to the $1.48 billion breakup fee, was required to reimburse Williams for the $410 million WPZ termination fee, and was liable for related attorney's fees.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Griffiths, Justice; Seitz, Chief Justice; Valihura, Justice; Traynor, Justice; Legrow, Justice
JURISDICTION	Delaware
DECIDED	October 10, 2023
DOCKET	No. 391, 2022
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Delaware Court of Chancery's dismissal of ETE's counterclaim for a $1.48 billion contractual termination fee, its post-trial judgment requiring ETE to reimburse Williams for a $410 million transaction termination fee, and its award of attorney's fees and expenses under the merger agreement.
STANDARD OF REVIEW	De novo review applied to dismissal under Rule 12(b)(6) and contract interpretation of unambiguous language; clear-error review applied to factual findings; abuse-of-discretion review applied to discovery sanctions and attorney's-fee awards.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Energy Transfer LP, Energy Transfer Corp LP, Energy Transfer Equity GP, LLC, ET Corp GP LLC, LE GP LLC v. The Williams Companies, Inc.

TOPICS

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

PRACTICE AREAS

contracts | corporate law | commercial litigation | appellate procedure

QUESTIONS PRESENTED

1. Whether Williams adversely modified or withdrew the contractual Company Board Recommendation so as to entitle ETE to a $1.48 billion termination fee.
2. Whether Williams materially breached the merger agreement's reasonable-best-efforts, ordinary-course, or financing-cooperation obligations.
3. Whether spoliation by a Williams executive required an adverse inference that Williams breached the merger agreement.
4. Whether the $1 billion equity-issuance exception in ETE's Parent Disclosure Letter excused ETE's preferred offering and its resulting breaches of the merger agreement.
5. Whether the Court of Chancery abused its discretion by awarding Williams attorney's fees under a contingent-fee arrangement and by compounding interest quarterly.

HOLDINGS

1. Williams did not withdraw, modify, or qualify the defined Company Board Recommendation within the meaning of the merger agreement. Public statements, litigation pleadings, and efforts to enforce the merger did not constitute an adverse recommendation change, so ETE was not entitled to the $1.48 billion termination fee.
2. Williams did not materially breach its reasonable-best-efforts or ordinary-course obligations through its executives' communications with a shareholder-litigant, its handling of dissenting directors, its public statements, or its litigation against ETE and Warren.
3. The Court of Chancery did not abuse its discretion by imposing monetary discovery sanctions rather than drawing an adverse inference that Williams breached the merger agreement.
4. Williams did not breach the merger agreement by refusing to consent to ETE's proposed public offering because the financing-cooperation obligation was subject to a reasonableness limitation and ETE's request was unreasonable given its adverse effect on Williams shareholders.
5. The Parent Disclosure Letter's $1 billion equity-issuance exception was ambiguous, and extrinsic evidence established that it applied only to the corresponding equity-issuance covenant, not to the other ordinary-course and interim-operating covenants. It therefore did not excuse ETE's preferred offering or its material breaches.
6. The Court of Chancery did not abuse its discretion by awarding Williams reasonable attorney's fees based on its contingent-fee arrangement or by awarding quarterly compounded interest under the merger agreement.

KEY QUOTATIONS

> *“But we find no error with the Court of Chancery’s well-reasoned opinions that hold that ETE is not entitled to an over-one-billion-dollar fee and find that ETE must pay Williams the $410 million reimbursement fee and the related $85 million in attorney’s fees.”* (2)

> *“We therefore affirm the Court of Chancery’s judgment.”* (58)

FACTUAL BACKGROUND

Williams and ETE entered into a 2015 merger agreement involving a multibillion-dollar all-equity transaction. Before closing, ETE completed a private preferred-unit offering benefiting insiders and later terminated the merger after its tax counsel concluded that it could not issue the contractually required opinion concerning favorable tax treatment under Internal Revenue Code § 721(a). Williams had previously paid a $410 million termination fee in connection with a separate WPZ transaction, and the merger agreement required ETE to reimburse that amount if specified conditions, including material covenant breaches, were present. The Court of Chancery found that ETE breached the ordinary-course and interim-operating covenants through the preferred offering, while Williams did not materially breach its efforts or financing-cooperation obligations.

PROCEDURAL HISTORY

After ETE terminated a proposed merger with Williams when counsel could not provide a favorable tax opinion under Internal Revenue Code § 721(a), the parties litigated competing claims concerning contractual termination fees and related obligations. The Court of Chancery dismissed ETE's counterclaim, found that ETE materially breached specified merger-agreement covenants and therefore owed Williams the $410 million reimbursement, and awarded Williams attorney's fees and expenses. ETE appealed those rulings, and the Delaware Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Williams Companies, Inc. v. Energy Transfer LP, 2021 WL 6136723 (Del. Ch. Dec. 29, 2021)
- Williams Companies, Inc. v. Energy Transfer Equity, L.P., 159 A.3d 264, 267, 273 (Del. 2017)
- In re Energy Transfer Equity, L.P. Unitholder Litig., 2018 WL 2254706, at *8 (Del. Ch. May 17, 2018), aff'd sub nom. Levine v. Energy Transfer L.P., 223 A.3d 97 (Del. 2019)
- Williams Companies, Inc. v. Energy Transfer Equity, 2017 WL 5953513 (Del. Ch. Dec. 1, 2017)
- Williams Companies, Inc. v. Energy Transfer LP, 2020 WL 3581095 (Del. Ch. July 2, 2020)
- Williams Companies, Inc. v. Energy Transfer LP, 2022 WL 3650176 (Del. Ch. Aug. 25, 2022)
- In re General Motors S'holder Litig., 897 A.2d 162, 167-68 (Del. 2006)
- Vanderbilt Income & Growth Assocs., LLC v. Arvida/JMB Managers, Inc., 691 A.2d 609, 613 (Del. 1996)
- VLIW Tech., LLC v. Hewlett-Packard Co., 840 A.2d 606, 615 (Del. 2003)
- ITG Brands, LLC v. Reynolds Am., Inc., 2019 WL 4593495, at *4 (Del. Ch. Sept. 13, 2019)

- Backer v. Palisades Growth Cap. II, L.P., 246 A.3d 81, 94-95 (Del. 2021)
- Schock v. Nash, 732 A.2d 217, 224 (Del. 1999)
- Powell Indus., Inc. v. Allen, 985 S.W.2d 455, 456 (Tex. 1998)
- Cont'l Coffee Prod. Co. v. Cazarez, 937 S.W.2d 444, 452 (Tex. 1996)
- Medek v. Medek, 2008 WL 4261017, at *10 (Del. Ch. Sept. 10, 2008)
- Genger v. TR Invs., LLC, 26 A.3d 180, 190 (Del. 2011)
- Zachman v. Real Time Cloud Servs. LLC, 251 A.3d 115, 2021 WL 1561430, at *5 (Del. 2021)
- Shawe v. Elting, 157 A.3d 142, 149 (Del. 2017)
- Beard Rsch., Inc. v. Kates, 981 A.2d 1175, 1189 (Del. Ch. 2009)
- TR Invs., LLC v. Genger, 2009 WL 4696062, at *18 (Del. Ch. Dec. 9, 2009), aff'd, 26 A.3d 180 (Del. 2011)
- Union Oil Co. of California v. Mobil Pipeline Co., 2006 WL 3770834, at *11 (Del. Ch. Dec. 15, 2006)
- Williams Field Servs. Grp., LLC v. Caiman Energy II, LLC, 2019 WL 4668350, at *34 (Del. Ch. Sept. 25, 2019), aff'd, 237 A.3d 817 (Del. 2020)
- Akorn, Inc. v. Fresenius Kabi AG, 2018 WL 4719347, at *91 (Del. Ch. Oct. 1, 2018), aff'd, 198 A.3d 724 (Del. 2018)
- Sonitrol Holding Co. v. Marceau Investissements, 607 A.2d 1177, 1181 (Del. 1992)
- Salamone v. Gorman, 106 A.3d 354, 369, 374 (Del. 2014)
- Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co., 616 A.2d 1192, 1196 (Del. 1992)
- Shareholder Representative Servs. LLC v. Shire US Holdings, Inc., 2021 WL 1627166, at *2 (Del. Ch. Apr. 27, 2021), aff'd, 267 A.3d 370 (Del. 2021)
- Mahani v. Edix Media Group, Inc., 935 A.2d 242, 245-46 (Del. 2007)
- Americas Mining Corp. v. Theriault, 51 A.3d 1213, 1253 (Del. 2012)
- Summa Corp. v. Trans World Airlines, Inc., 540 A.2d 403, 409 (Del. 1988)
- Gotham Partners, L.P. v. Hallwood Realty Partners, L.P., 817 A.2d 160, 173 (Del. Ch. 2002)
- Brandin v. Gottlieb, 2000 WL 1005954, at *29 n.83 (Del. Ch. July 13, 2000)
- ONTI, Inc. v. Integra Bank, 751 A.2d 904, 926 (Del. Ch. 1999)

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