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Swift and Rigorous — Texas Business Court’s Primexx Energy Ruling and Its Implications for Corporate Governance

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Texas is at the forefront of a new era in corporate governance. As businesses question decades of wisdom that led to an unflinching resolve to incorporate in Delaware, everyone seems to be asking the same question about Texas, Nevada and other states: “What do you offer that’s better?”

A recent decision from the Texas Business Court helps answer that question: In Texas, parties can obtain swift, efficient decisions related to complex business transactions and count on courts to enforce contracts as they’re written.

The Dispute

The case is *Primexx Energy Operating Fund, LP et al. v. Primexx Energy Corporation, et al.*, currently pending in Division 1B of the Texas Business Court. Among other issues addressed in the court’s opinion, *Primexx* involves claims by minority partners that the controlling partners breached fiduciary duties by causing the sale of an oil and gas exploration business.

The minority partners’ interests were subject to a “drag along” right held by the controlling partners, which allowed the controlling partners to force a sale of the entire business on the controlling partners’ chosen terms — potentially against the will of the minority partners. The minority partners claimed that the controlling partners breached fiduciary duties, including the duties of care, good faith and loyalty, by structuring the deal in the controlling partner’s interest and failing to act in the best interests of the

partnership as a whole.

The parties’ partnership agreement extensively discussed how a sale could be structured, and “fram[ed] specific activities that” could be undertaken as part of a sale process. Specifically, the agreement allowed the controlling partner to “decide or determine any matter in its sole and absolute discretion taking into account solely its interest and those of its Affiliates,” subject to established duties of good faith and fair dealing under Texas law. Under the contract, this provision extended to the controlling partners’ drag along rights — meaning that the partnership agreement allowed the controlling partners to set a sale price without specifically considering the minority partners’ interests.

In a rigorous opinion, the court analyzed the partnership agreement against the Texas Business Organizations Code. Section 152.002(a) of the TBOC gives partners freedom to negotiate their own rights and obligations, subject to certain limitations, providing that “a partnership agreement governs the relations of the partners and between the partners and the partnership.” Although Section 152.002(b) prohibits partners from fully disclaiming the duty of loyalty, “the partners by agreement may identify specific types of activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable.”

Applying this statutory framework to the partnership agreement at hand, the *Primexx* court concluded that the parties’ negotiated rights were not “mani-

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festly unreasonable” and that the controlling partners’ “drag along” sale was not a breach of fiduciary duty as a matter of law.

Implications

The court’s opinion is a clear message to the business community: The Texas Business Court will enforce agreements as written, and it will do so quickly without years of litigation. This is a particularly important message when the business community is fearful of Delaware courts substituting their judgment in place of written agreements (and statutes).

The first significant aspect of the court’s ruling is that it grants summary judgment within six months of the case being filed. This is a sea change in Texas state court practice, particularly given that the court’s opinion required a lengthy analysis of complicated contractual provisions and decades of statutory revisions. The court even notes at the outset of its analysis that a defendant may move for summary judgment and the court “shall render judgment” if there is no genuine dispute of material fact. For parties to have the prospect of reaching resolution (at least in significant part) within months, rather than years, makes Texas courts a much more attractive forum — and not just for defendants.

Another significant aspect of the court’s ruling is the rigorous analysis, which can serve as a framework for future litigants. The court showed its willingness to apply well-established precedent to “construe partnership agreements like contracts ... and give effect to the parties’ intent as expressed in the instrument.” While the court did go on to note that “business context and realities” can be important to interpret agreements, these circumstances do not change that it is the court’s job to interpret unambiguous contracts. Later, the court even cites *Reading Law* by Justice Antonin Scalia and Bryan Garner and its canons of interpretation to support its analysis of the agreement. The court put it plainly when it said, “that is the deal the [parties] made

and the deal the court is going to enforce to the full extent Texas law permits.” This type of ruling is also a new development in Texas state court trial practice, where courts have sometimes been reluctant to issue rulings interpreting contracts before trial.

The court’s opinion is also significant for its holding limiting partners’ fiduciary duties. The court affirmed that parties can contractually limit their fiduciary duties, refusing to impose “a general fiduciary duty, when the parties agreed that a partner can take actions that would otherwise violate it.” The court not only analyzed each applicable duty, but also provided comprehensive and instructive guidance for how a partner can ascertain the contours of this (sometimes nebulous) duty. A key thread throughout the court’s analysis is that when a partner strictly follows the terms of its agreement, those actions cannot be couched as breaches of fiduciary duties.

Conclusion

The Texas Business Court officially launched Sept. 1, and most of its early rulings dealt with jurisdictional questions. But we’re now at the tipping point, six months in, when the court can start issuing substantive rulings.

There will likely be a wave of new opinions over the next several months, and we’ll be able to glean more about the direction of Texas jurisprudence and what to expect when practicing in the Business Court. This first decision, though, undoubtedly indicates that the Business Court will follow through with its mission to efficiently resolve complex business cases and apply contracts as written.

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