

Court of Chancery Denies Motion to Dismiss Claim Alleging that General Partner Breached Contractual Duty of Good Faith

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In *Morris vs. Spectra Energy Partners (DE) GP, LP*, the Court of Chancery of the State of Delaware found that a limited partner adequately pled that the general partner of a master limited partnership breached its contractual duty to act in good faith in connection with a conflicted transaction between the master limited partnership and the indirect parent of the general partner. The Court also dismissed claims for breach of the implied contractual covenant of good faith and fair dealing and tortious interference with a partnership agreement.

Paul Morris was a limited partner of Spectra Energy Partners, LP, a Delaware master limited partnership (the “Partnership”). The general partner of the Partnership (the “General Partner”) caused the Partnership to sell one of its assets, a one-third interest in two pipeline companies (the “Interest”), to Spectra Energy Corp. (“SE Corp”), the indirect parent of the General Partner (the “Transaction”). Before effectuating this conflicted Transaction, the Partnership’s conflicts committee (the “Conflicts Committee”) approved the Transaction and, in so doing, relied on a fairness opinion from Simmons & Company International (“Simmons”). Despite receiving the Simmons fairness opinion and approval of the Conflicts Committee, Morris alleged that the General Partner breached its contractual duty to act in good faith because the value of the Interest was \$1.5 billion, but the Partnership received less than \$1 billion in consideration for the Interest.

Consequently, Morris brought a derivative suit on behalf of the Partnership alleging that, among other things, (1) the Transaction breached the partnership agreement of the Partnership (the “Partnership Agreement”), (2) the General Partner breached the implied contractual covenant of good faith and fair dealing, and (3) SE Corp tortiously interfered with the Partnership Agreement. The defendants, the General Partner and SE Corp, moved to dismiss Morris’s action for failing to state a claim upon which relief could be granted.

In its analysis of Morris’s claim for breach of the Partnership Agreement, the Court of Chancery first looked to the Partnership Agreement to determine what duties the General Partner owed to the Partnership. The Delaware Revised Uniform Limited Partnership Act gives maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements and provides that a partnership agreement may expand, restrict, or eliminate the default fiduciary duties of a general

partner. When a partnership agreement eliminates all default fiduciary duties, limited partners cannot rely on traditional fiduciary principles to regulate the general partner's conduct. Instead, they must look exclusively to the partnership agreement to understand their rights and remedies.

Here the Court found that the Partnership Agreement eliminated common law fiduciary duties in favor of contractual duties. Section 7.9(b) of the Partnership Agreement imposed on the General Partner an over-arching obligation to make determinations in "good faith," defined in the Partnership Agreement to mean that the General Partner was required to believe that the action taken was in the best interests of the Partnership. For purposes of the defendants' motion to dismiss, the Court was tasked with determining whether Morris alleged sufficient facts to make it reasonably conceivable that the General Partner breached its contractual good faith obligation with respect to the Transaction.

Before analyzing this issue, however, the Court addressed the threshold issue of whether the General Partner satisfied certain provisions of the Partnership Agreement to provide it with a rebuttable presumption of good faith or a conclusive presumption of good faith in connection with the Transaction. Section 7.9(a) of the Partnership Agreement provided that any action by the General Partner in respect of a conflicted transaction would not constitute a breach of the Partnership Agreement or of any duty if the action obtained "Special Approval," meaning that it was approved by a majority of the members of the Conflicts Committee of the Partnership. Morris did not dispute that Special Approval was obtained and, as such, the Partnership Agreement afforded the General Partner with a rebuttable presumption that it acted in good faith. The defendants, however, argued that the General Partner was entitled to a conclusive presumption of good faith under Section 7.10(b) of the Partnership Agreement. Section 7.10(b) provided that any act taken by the General Partner in reliance upon the opinion of legal counsel, accountants, appraisers, or other advisors would be conclusively presumed to have been done in good faith. Since the Conflicts Committee relied on the Simmons fairness opinion and the General Partner, in turn, relied on the Conflicts Committee, the General Partner argued that it should have been conclusively presumed to have acted in good faith.

The Court rejected this argument citing the principle of contract construction that specific provisions of a contract control over more general ones even though Sections 7.9(a) and 7.10(b) did not contradict each other. Further, the Court stated that to the extent that there was any ambiguity regarding the presumption that should apply, Delaware law teaches that because of the nature of alternative entities (including limited partnerships) and their broad contractual freedoms, coupled with Morris's limited bargaining power, as a limited partner, and the fact that Morris's only protections flowed from the text of the Partnership Agreement, ambiguities should be resolved in favor of Morris.

The Court then held that Morris's complaint gave rise to a pleading stage inference of subjective bad faith. The allegation that the Transaction was approved in the face of a half-a-billion dollar (and one-third) gulf in value created a reasonable inference that the General Partner's approval of the Transaction was in bad faith.

The court then dismissed Morris's claim that the General Partner breached the implied contractual covenant of good faith and fair dealing. The covenant exists in every contract, cannot be disclaimed, and applies as a gap-filler for situations that parties had not considered or expressly addressed in the contract. The Court held that because the Transaction was subject to review under the rebuttable presumption of good faith, there was no gap to fill in the Partnership Agreement and, thus, no claim upon which relief could be granted.

Lastly, the Court dismissed Morris's tortious interference claim. Morris alleged that SE Corp tortiously interfered with the Partnership Agreement by, among other things, structuring the

Transaction, which it knew was not in the best interests of the Partnership and, therefore, would cause the General Partner to breach its good faith obligation under the Partnership Agreement. The Court, however, rejected this claim. According to the Court, SE Corp's offer to purchase the Interest did not, in and of itself, imply an intention to cause a breach of the Partnership Agreement nor was it a significant cause of the breach. The Court held that Morris failed to allege that SE Corp intruded on the Conflicts Committee or the General Partner in a way that caused or facilitated bad-faith capitulation to SE Corp's offer to purchase the Interest.

[Morris v. Spectra Energy Partners \(DE\) GP, LP](#)

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