

Drafting Oversight Costs Seller \$109 Million: The Save Mart Case

Publications

October 2024

By: Donald E. Batterson

On February 28, 2024, the Delaware Court of Chancery “reluctantly” confirmed an arbitrator’s award, leaving many in the private equity community surprised.^[1] This decision led to MP Seller Holdings LLC (Seller), seller of a \$40 million grocery store chain, Save Mart Supermarkets, LLC (Save Mart), being obligated to pay SM Buyer LLC (Buyer) \$87 million in a post-closing purchase price adjustment. The unexpected outcome was based on a literal interpretation of the terms in the equity purchase agreement (Agreement), despite the intended "spirit" of the deal, and underscores Delaware courts' strong adherence to contract language. This decision is now under appeal to the Delaware Supreme Court.

Background

Save Mart held a one-third property interest in a joint venture (JV Interest) connected to Superstore Industries (SSI), another grocery business. Save Mart recorded this interest in its books as an equity investment and did not separately list any of SSI’s debt.

The M&A transaction was structured to be on "debt-free, cash-free" basis and the Agreement included a routine post-closing price adjustment based on the company's balance sheet changes. Initially, Buyer presented a pre-closing statement showing a purchase price of \$39,598,051, treating the JV Interest as equity and not accounting for SSI’s debt. Seller anticipated receiving around \$40 million. However, in June 2022, Buyer’s final closing statement included \$109 million in SSI’s debt, reversing the purchase price to a negative amount, and requiring Seller to pay Buyer nearly \$90 million to complete the transaction.

Award and Confirmation

The disagreement between the parties arose from differing interpretations of "Closing Date Indebtedness" in the Agreement. Unable to resolve it, the parties submitted the dispute to an accounting referee and then to arbitration, as outlined in the Agreement. Arbitrator Joseph Slights, a former Delaware vice chancellor, strictly interpreted the definition, supporting Buyer's purchase price calculation. Although this decision was unconventional and appeared misaligned with the transaction's economic realities, the arbitrator upheld it. To overturn an arbitration award, a court

must affirm the decision unless it can be demonstrated that the arbitrator acted in "manifest disregard of the law," a very high standard. Therefore, the Chancery confirmed the award.

Takeaways

The Save Mart case highlights not only the critical need for precise drafting in transaction documents, but also the potential pitfalls of arbitration. Parties opting for arbitration should be aware that, if a dispute arises, a Delaware court is unlikely to offer recourse to the losing party.

This article is available in the Jenner & Block Japan Newsletter. / この記事はJenner & Blockニュースレターに掲載されています。

Footnotes

[1] *SM Buyer LLC v. RMP Seller Holdings, LLC*, C.A. No. 2023-0957-JTL, order at 1-2 (Del. Ch. Feb. 28, 2024).

Related Attorneys



Donald E. Batterson

Partner

dbatterson@jenner.com

+1 312 923 2607

Related Articles

Jenner & Block Japan Newsletter | October 2024

Related Capabilities

Corporate

Japan Practice

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

