

Delaware Court Upholds Contractual Freedom in Dismissal of CityMD Merger Challenge

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In a landmark decision with far-reaching implications for private equity-backed ventures and minority investors in Delaware limited liability companies, the Delaware Court of Chancery dismissed a lawsuit brought by former minority unitholders of urgent care provider CityMD. The case, *Faiz Khan and Ralph Finger v. Warburg Pincus, LLC, et al.* (April 30, 2025), reaffirms the primacy of negotiated contract terms and the enforceability of fiduciary duty waivers in limited liability company agreements.

Background

In 2019, CityMD merged with Summit Medical Group, forming WP CityMD Topco LLC, with Warburg Pincus holding a 60% majority stake via Class A units and physician co-founders Dr. Faiz Khan and Dr. Ralph Finger (alongside other minority investors) holding 17% through Class B units. The LLC agreement included typical minority protections such as tag-along rights and pro-rata consideration in change-of-control transactions. Crucially, it also contained broad waivers of fiduciary duties, explicitly allowing the Warburg-affiliated investors to act in their own interests, provided they complied with the agreement's terms.

In 2022, Warburg Pincus negotiated a merger with VillageMD, a Walgreens-controlled primary care provider. Under the terms of the \$8.9 billion transaction, Class A unitholders were to receive an all-cash payout of \$3.3 billion, while Class B unitholders were offered a mix of \$1.6 billion in cash and \$2 billion in VillageMD equity. This structure required an amendment to the LLC agreement to eliminate the tag-along rights of the minority investors—and an amendment that was approved by the requisite majority of affected Class B unitholders.

The Lawsuit

Following a post-closing drop in VillageMD's valuation, Khan and Finger sued Warburg Pincus, VillageMD, and Walgreens, alleging breach of the implied covenant of good faith and fair dealing, tortious interference, and unjust enrichment. The plaintiffs contended they were coerced into approving the amendment and were inadequately informed of the conflicts of interest and disparate treatment.

However, the Court, led by Vice Chancellor Lori Will, granted the defendants' motion to dismiss with prejudice, holding that the LLC agreement explicitly allowed for the actions taken and did not leave any “gaps” that would justify the application of such an implied covenant.

Key Takeaways

- **Contractual Clarity Controls:** The Court emphasized that the LLC agreement clearly permitted amendments affecting unitholder rights with the consent of a majority of the affected class. As such, the implied covenant could not be used to rewrite the agreement or create protections the parties did not negotiate.
- **Fiduciary Duties Effectively Waived:** Delaware law permits parties to waive fiduciary duties in LLC agreements. The Court held that such waivers are enforceable, and that plaintiffs could not substitute implied covenant claims for eliminated fiduciary obligations.
- **No Free-Floating Duty of Disclosure:** Plaintiffs' claims that the disclosures surrounding the vote were insufficient were also rejected. The Court noted that, absent an express contractual obligation to provide specific disclosures, no general duty existed, particularly in light of the fiduciary duty waivers.
- **No Basis for Tort or Equity Claims:** Because no breach of an express or implied term was found, the Court dismissed related claims of tortious interference and unjust enrichment, reinforcing that equitable doctrines cannot override explicit contract provisions.

Practical Implications

This decision is a potent reminder: **Delaware courts will enforce LLC agreements as written.** Minority investors should negotiate for the specific protections they want at the outset, particularly if fiduciary duties are being waived. The ruling also signals that LLC members should not rely on equitable claims to challenge the outcomes of contractual arrangements—especially when those arrangements include express mechanisms for amendments and waivers.

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