

Court of Chancery Holds No Personal Jurisdiction over Lessors on a Leaseback Related to a Stock Purchase Agreement

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In *Plaze, Inc. and Apollo Aerosol Industries LLC v. Chris K. Callas et al.*, the Court of Chancery ruled that a stock purchase agreement's (SPA) Delaware forum selection clause did not bind seller affiliates who leased back assets for the sold businesses covered by the SPA. The decision provides helpful guidance regarding the tension created by "arising from or related to" forum selection language—ultimately, the language will not apply if the leaseback is silent on the forum or indirectly names another forum and if the sale document does not include the leaseback counterparty in its definition of "Parties."

Case Background

Plaze, Inc., purchased Georgia-based Apollo Aerosol Industries from Chris and Maria Callas with a trust in favor of Anna Callas (the sellers) in 2015. Plaze leased three Apollo production facilities in Georgia back from the seller affiliates (the lessors) instead of purchasing them. The SPA contained a typical Delaware forum selection clause for disputes "arising from or relating to" the SPA and the leases contained a jury trial waiver "under the laws of the State of Georgia."

In 2018, the lessors sued Plaze and Apollo in Georgia state court alleging property damage, lease violations, and environmental harm. Plaze and Apollo then sued both the sellers and the lessors in Delaware to enjoin them from pursuing the Georgia action, arguing that claims related to the leaseback were "arising from or relating to" the SPA and therefore subject to Delaware forum selection.

All parties moved to dismiss. The lessors moved for lack of personal jurisdiction based on Rule 12(b)(2) for lack of any contractual tie to Delaware, and the sellers moved for failure to state a claim on Rule 12(b)(6) because they were not parties to the Georgia action and consequently could not be enjoined from pursuing it.

Court of Chancery Decision

Vice Chancellor Montgomery-Reeves analyzed the three following plaintiff arguments in favor of a Delaware forum and ultimately found a lack of personal jurisdiction per Rule 12(b)(2) and failure to state a claim per Rule 12(b)(6):

- The court rejected a convoluted textual argument on the SPA's failure to sometimes capitalize the word "parties," finding "Parties" to be a contractually defined term that did not include the lessors.
- The court conducted a detailed analysis based on *Weygandt v. Weco LLC* to reject the buyer's argument that the leases and SPA must be read together as a single contract. In *Weygandt*, an asset purchase agreement mandated a Delaware forum, and a parallel leaseback with a different entity was silent as to forum. The Court of Chancery held that the silence of the lease agreements as to forum did not constitute adoption of the forum selection clause from the related purchase agreement. The court found this situation even less favorable to a mandatory Delaware forum than was the fact scenario in *Weygandt*, because the leases here contained a Georgia law jury trial waiver. Moreover, the lessors had not consented to a Delaware forum in any relevant contract, and there was no question of transferring Delaware consent in one contract to another related contract. The court rejected related arguments based on *Ashall Homes v. ROK Entertainment Group Inc.* as less applicable than *Weygandt*.
- The court ruled that the lessors were not equitably estopped from asserting their Georgia forum. The lessors did not seek to avoid their obligations under the SPA, but sought to enforce their rights under the leases to which they were parties. The court rejected the assertion that the lessors had engaged in "artful pleading" to avoid the SPA because the lessors were not parties to the SPA.

Key Takeaways

The court dismissed claims against the lessors for lack of personal jurisdiction and against the sellers for failure to state an injunction claim. This decision presents practical guidance on the scope of "arising from or related to" language as applied to leasebacks that are signed in the context of a sale of a going concern. If the leaseback is silent on forum as in *Weygandt*, or obliquely names another forum as in *Plaze*, and the sale document does not include the leaseback counterparty in its definition of "Parties," then a forum selection clause in the sale contract will not apply.