

Delaware Court of Chancery Explains “Best Efforts” and “Sound Business Practices” and Provides Other Valuable Lessons for Delaware Limited Partnerships

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As stated by Vice Chancellor Slight in *Wenske v. Blue Bell Creameries, Inc.*, C.A. No. 2017-0699-JRS (Del. Ch. July 6, 2018), “whether conduct is right or wrong in the eyes of the law, actionable or not actionable, depends in large part upon the standard by which the conduct is measured.” In this case, the court made note that in the alternative entity context, the standard by which managers of an alternative entity must monitor and address operational risk will largely depend on what the parties say about those standards in the operative entity agreement. However, under Delaware law, if the entity agreement is silent in this regard, the traditional fiduciary duties of loyalty and care apply by default to the entity’s managers. *Wenske* was a case where the parties expressly disclaimed fiduciary duties but included in their limited partnership agreement certain express standards. One of the questions that the court addressed was which standard the actions of the defendant was to be judged by.

This case addressed and interpreted the meaning of “best efforts” and “sound business practices” in the context of a limited partnership agreement (“LPA”), which failed to define those terms. It was noteworthy that the court used the dictionary definition of those terms and reasoned that the plain meaning of the words should be used absent an express definition of the terms in the LPA. The case also provides additional noteworthy takeaways.

The LPA provided that “[a]ny standard of care and duty imposed by [the LPA] or under [the Delaware Revised Uniform Limited Partnership Act.] or any applicable law, rule or regulation shall be modified, waived or limited, to the extent permitted by law, as required to permit [the general partner] to act under [the LPA] or any other agreement contemplated by [the LPA] and to make any decision under the authority prescribed in [the LPA], so long as the action is reasonably believed by [the general partner] to be in, or not inconsistent with, [the partnership’s] best interests.” The Delaware Supreme Court has confirmed that the foregoing language such as appears in the LPA “*unconditionally eliminate[s] all common law standards of care and fiduciary duties, and substitute[s] a contractual good faith standard of care.*” However, this contractual good faith standard operates only “in the spaces of the LPA without express standards.” It does not displace or otherwise “modify” the general partner’s affirmative contractual obligation under the LPA to “use its best efforts to conduct [the partnership’s] business . . . in accordance with sound business practices in the [dairy] industry.”^[1] Thus, the court held that there is no room or need for the LPA to modify the general partner’s “best efforts” obligation under the LPA.

- The court also explained that when fiduciary duties are disclaimed and a new contractual standard is inserted to replace default fiduciary standards, the appropriate terminology for a claim for breach of that standard is a simple breach of contract, and not a breach of a “contractual fiduciary duty.”
- The court also pointed out that where the limited partnership agreement entirely eliminates the general partner’s common law fiduciary duties, it is highly doubtful that the general partner’s controllers owe any fiduciary duties to the limited partnership. Insofar as they do, however, those duties require only that the controllers refrain from self-dealing; i.e., that they “not . . . use control over the [limited] partnership’s property to advantage [themselves] at the expense of the partnership.”

We note the following takeaways from this case, though they are not related to the fiduciary duty issue per se:

- Under Delaware law, “[p]iercing the corporate veil under the alter ego theory ‘requires that the corporate structure cause fraud or similar injustice Effectively, the corporation must be a sham and exist for no other purpose than as a vehicle for fraud.’”
- Under Delaware law, a joint venture is created where there is (1) a community of interest in the performance of a common purpose; (2) joint control or right of control; (3) a joint proprietary interest in the subject matter; (4) a right to share in the profits; and (5) a duty to share in the losses which may be sustained.

[1] For further reading on a previous Delaware Supreme Court ruling regarding general versus specific contractual standards in a limited partnership agreement, please see our summary here: [\[https://www.mccarter.com/Delaware-Supreme-Court-Redefines-Contractual-Good-Faith-Standard-and-Cautions-Limited-Partners-That-Their-Obligations-Under-the-LPA-Can-Be-Enlarged-without-Their-Consent-04-27-2017/\]](https://www.mccarter.com/Delaware-Supreme-Court-Redefines-Contractual-Good-Faith-Standard-and-Cautions-Limited-Partners-That-Their-Obligations-Under-the-LPA-Can-Be-Enlarged-without-Their-Consent-04-27-2017/)