

Chancery Considers Relationship Between Boilerplate and Bespoke Contract Provisions



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James H. S. Levine | levinejh@pepperlaw.com
Douglas D. Herrmann | herrmannnd@pepperlaw.com

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All agreements rely on a mix of provisions to achieve the contracting parties' objectives. Some of these provisions will necessarily be bespoke—drafted for use in the particular agreement—while others will be boilerplate—stock, uncategorized language usually reserved for more routine aspects of the agreement, such as integration and construction clauses and disclaimers of third-party beneficiaries. But the intersection of those provisions can lead to serious disputes about interpretation of the agreements, and requires courts to determine the impact of potentially conflicting language. In a recent ruling,

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Dolan v. Altice USA, C.A. No. 2018-0651-JRS, the Delaware Court of Chancery confronted this issue, and concluded that a boilerplate third-party beneficiary disclaimer did not necessarily eliminate obligations to third parties when they may be the only parties capable of enforcing a substantive, bespoke provision.

Background

In 2016, multinational telecom company Altice acquired Cablevision Systems Corp., one of the largest U.S.-based cable operators, for approximately \$17.7 billion. Cablevision was founded by members of the Dolan family, who remained the company's largest stockholders until its sale to Altice.

Although they were not parties to the merger agreement, the Dolans were heavily involved in the negotiations. Among the assets Altice acquired in the merger were a collection of regional cable news channels, collectively known as News12 Networks LLC. News12 was of particular importance to the Dolans, who alleged that they initially sought to carve it out of the transaction, but subsequently agreed to include it in exchange for assurances in the merger agreement that Altice would continue to operate News12 "in a manner that preserved its employee base, quality reporting and programming."

To achieve that goal, Altice agreed in Section 6.4(f) of the merger agreement that it would operate News12 substantially in accordance with the station's then-existing business plan at least through 2020. The Dolans contend that Section 6.4(f) was included expressly for their benefit.

In spring 2017, a year after the merger closed, Altice took several actions contrary to the News12 business plan, including terminating a number of employees and planning additional, wide-scale downsizing of News12's workforce. The plaintiffs—including the Dolans—sued to specifically enforce Section 6.4(f) and enjoin Altice from terminating any News12 employees or otherwise operating News12 in a manner contrary to its business plan.

Altice moved to dismiss on two primary grounds. First, it asserted that Section 6.4(f) did not survive consummation of the merger because it was not among the provisions that survived closing as set forth in Section 9.1. Second, Altice claimed that the plaintiffs (including the Dolans) lacked standing to assert claims under the merger agreement because they were not parties to the agreement and Section 9.8 specifically disclaimed any intention to confer rights on third-party beneficiaries.

The Court's Ruling

Vice Chancellor Joseph R. Slights III denied Altice's motion to dismiss with respect to the Dolans' claims after dismissing the claims of the other plaintiffs. Reiterating Delaware's familiar contract interpretation standards, he wrote that although "the goal of contract construction ... is to 'harmonize' related contractual provisions ... that simply cannot be done here by looking only within the four corners" of the merger agreement. "Extrinsic evidence is required to determine what Section 6.4(f) was intended to mean and how, if at all, it is to be enforced."

The court recognized that, "not surprisingly, as with most contracts, the merger agreement features some boilerplate, some bespoke provisions and some bespoke boilerplate. The question presented here is whether the boilerplate and bespoke boilerplate should be construed, as a matter of law, to render a bespoke provision superfluous." In this case, the question was whether Section 6.4(f) was rendered "superfluous" by more standard provisions regarding survival and third-party beneficiaries. The vice chancellor determined that he could not conclude, as a matter of law, that the comparatively boilerplate provisions removed any utility from Section 6.4(f).

One of the primary questions was whether the Dolans had standing to enforce Section 6.4(f) despite not being identified in that section or Section 9.8 as third-party beneficiaries. To demonstrate standing to enforce a contract as a third-party beneficiary, a plaintiff must plead facts that allow a reasonable inference that: "the contracting parties intended that the third party beneficiary benefit from the contract, the benefit was intended as a gift or in satisfaction of a pre-existing obligation to that person, and the intent to benefit the third party was a material part of the parties' purpose in entering into the contract." Slights concluded that the Dolans met that standard by alleging that they would not have agreed to include News12 in the transaction if Altice had not agreed to operate it in accordance with its business plan, and Section 6.4(f) was included in the merger agreement to "induce the Dolan family to sell their Cablevision stock, merge Cablevision and News12 into Altice and sign the written consent in favor of the merger agreement."

The court also rejected Altice's argument that Section 6.4(f) was unenforceable because it was not listed in Section 9.1, which enumerated the provisions that survived consummation of the merger, and that, as a result, Section 6.4(f) was "simply a goodwill gesture and was in no way meant to bind Altice before or after the merger closed." In response, the plaintiffs noted that Section 6.4(f) "is not drafted as an expression of good will" but instead unmistakably creates an obligation.

Evaluating these two sections and the parties' arguments, Slights applied two canons of construction to determine that the interplay between the two provisions was sufficiently ambiguous to deny Altice's motion to dismiss. First, the court determined that, under Altice's theory, the survival clause (Section 9.1) would render Section 6.4(f) superfluous because it would not be enforceable by anyone, and that such a result is "inconsistent with the contractual [canon] that discourages the court from construing a contract in a way that results in 'mere surplusage.'" Second, the court found Altice's interpretation "also creates an arguably 'absurd result' by rendering meaningless the protections the Dolan family allege they bargained for with respect to News12." If the parties had clearly expressed in the merger agreement whether they intended for Section 6.4(f) to survive closing, the result may have been different, but the court concluded that the agreement, as drafted, was not clearly unambiguous.

Takeaways: Draft Agreements to Cover as Many Contingencies as Possible

No matter how many possible future events parties contemplate when drafting their agreements, some things may still fall through the cracks. To ensure that parties' expectations are met within Delaware's contract interpretation doctrine, they should carefully specify which provisions and obligations in agreements survive closing, and who has the right to enforce those obligations. Express disclaimers of third-party beneficiaries may be invalid if other provisions of the agreement would be rendered meaningless in the absence of an enforcement mechanism. And even the most mundane boilerplate provisions may impact the parties' rights and obligations if the alternative would render other provisions as surplusage.