Unclean Hands and Unreasonable Demands — Chancery Court Holds That Plaintiff’s Fiduciary Duty Claims Fail Due to Doctrine of Unclean Hands

Article By:

Scott E. Waxman

Jonathan M. Miner

In *Thomas McKenna, et al., v. David Singer, et al.*, C.A. No. 11371-VCMR (Del. Ch. July 31, 2017), the Delaware Court of Chancery relied on the doctrine of unclean hands to rule against the McKennas, a father and son team of would-be energy conversion financiers, who brought a claim for breach of fiduciary duties against their business partners, Daniel and David Singer, for alleged misappropriation of a corporate opportunity. The Singers were brothers and co-owned of an energy distribution business conducted through their companies, Singer Energy Group, LLC (“SEG”) and Robison Energy, LLC (“Robison Energy”). The Singers and McKennas formed two entities together, Robison Energy Fund, LLC (“REF”) and Green Energy Companies, LLC (“GEC”), with the intent of using REF and GEC to create a new financing business that would assist in capitalizing the Singers’ existing businesses and would act as an underwriting arm for loans to customers that wanted to finance energy conversion projects performed by Robison Energy. These business and financing plans failed and the Singers turned instead to Westport Capital Partners (“Westport”) for a financing deal in which the McKennas, REF and GEC were ultimately not involved. The McKennas then sued the Singers on the theory that the Singers misappropriated an opportunity that belonged to REF and GEC. The Court found that the McKennas had misrepresented their previous financing work, and such misrepresentations had been integral in inducing the Singers to enter into a business relationship with the McKennas. As such, the McKennas could not now “seek to enforce the fiduciary duties that attached in part because of their misrepresentations.” The Court also considered on the merits the McKennas’ misappropriation claim and determined that it also failed because the opportunity with Westport never belonged to REF and GEC and was an opportunity solely for Robison Energy.

Thomas and Garrett McKennas, as plaintiffs, filed their case with the Delaware Chancery Court alleging claims against the Singers for among other things, breach of fiduciary duty and unjust enrichment. The Singers, as defendants and counterclaimants, filed a response asserting that the McKennas were seeking an equitable remedy with unclean hands and counterclaiming for damages based on fraudulent inducement.

The Court first considered whether the doctrine of unclean hands barred the McKennas’ claim.

Relying on precedent, the Court stated that “the purpose of the clean hands maxim is to protect the public and the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit.” The Court further noted that “the standard … is that the inequitable conduct must have an ‘immediate and necessary’ relation to the claims under which relief is sought.” The Court found that the McKennas had made a number of misrepresentations to the Singers during the course of their discussions to form REF and GEC. The Singers were seeking partners that had financing and underwriting experience. Thomas McKenna represented to the Singers that he had experience as a lawyer working on loan documentation and further represented that as President of a company involved in oil-to-geothermal conversions, his company had financed geothermal installations. In fact, at trial Thomas McKenna admitted that his company had never completed such financing and that he did not have any experience securitizing loans. The Court also found that the McKennas had inflated the financing experience of Garret McKenna, stating that Garrett had underwritten hundreds of millions of dollars of loans while working at J.P. Morgan, when in fact Garrett was an entry-level employee and never underwrote any loans. The McKennas also stated that Garrett’s former employer, Wittier Partners might invest in the proposed financing, when in fact Garrett had been fired by Wittier Partners due to his perceived incompetence. The Court found that these misrepresentations “have an immediate and necessary relationship to the formation of REF and [GEC], and the McKennas cannot not seek to enforce the fiduciary duties that attach in part because of their misrepresentations.”

Although the Court found that the unclean hands doctrine barred the McKennas’ claims, his opinion also considered on the merits their breach of fiduciary duty claim and found that it, too, failed. The McKennas asserted that the Singers had gone outside their partnership and instead took a direct equity investment from Westport into Robison Energy to achieve the same financing goals for which that the Singers and McKennas had contemplated using REF and GEC. The Court found that notwithstanding the finding that the McKennas had unclean hands, they had not contributed any assets, while the Singers were putting in their own business and Westport was contributing cash. The McKennas had been unsuccessful in finding investors to capitalize either REF and GEC and they had no ownership interest in Robison Energy itself, so when the Singers negotiated with Westport for an investment in Robison Energy they did not take any asset or opportunity that belonged to the McKennas, GEC or REF.

The Court also considered a counterclaim brought by the Singers against the McKennas, but found that the Singers did not suffer any losses based on the McKennas’ misrepresentations. The Court reasoned that although the Singers and McKennas formed REF and GEC together in reliance on the McKennas’ exaggerated credentials, neither REF nor GEC entered into any agreements that would give rise to any monetary damages.

Thomas McKenna et al. v. David Singer et al. v. Westport Capital Partners LLC memorandum opinion 170731

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