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Delaware Court of Chancery Sustains Breach of Fiduciary Duty Claims Based on Terms of LLC Agreement


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On January 29, 2026, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery issued a decision denying Defendants'[1] motion to dismiss in *Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC*. The court maintained that it was reasonably conceivable that, following Victory Park Capital Advisors, LLC's ("Victory Park") investment in Calumet's lending business, Victory Park engaged in a deliberate scheme to damage Calumet's lending business and create a competing business and therefore breached fiduciary duties owed.

Background

In 2021, Calumet, a fund specializing in loans to law firms, entered into a business arrangement with Victory Park, an alternative investment manager and funder. As part of the arrangement, Victory Park invested $5 million in Calumet in exchange for the right to fund loans that Calumet originated for two years (the "Investment Period"). Calumet formed Calumet Capital Holdings LLC (the "Lender") and conducted its business solely through that entity. Victory Park invested $5 million in the Lender in exchange for a 10% membership interest. The entity was governed by an LLC Agreement,[2] which contained, *inter alia*, a "Protective Provision," which purported to eliminate any and all fiduciary duties and exculpate covered persons from liability, except for "an act or omission which constitutes fraud or willful misconduct."[3]

In order to raise capital and fund the loans, Victory Park established certain investment funds. The Lender, Victory Park, and the investment funds entered into an investment management agreement, which gave the investment funds a right of first offer on loan opportunities that the Lender generated during the Investment Period, which they could exercise "in their sole discretion."[4] Further, the Lender and the investment funds entered into a servicing agreement (the "Servicing Agreement"), pursuant to which the Lender agreed to service the loans in exchange for servicing fees. Pursuant to the Servicing Agreement, if the investment funds concluded, in their "reasonable credit judgment," that a credit facility was "non-performing," and if the Lender neglected to cure the non-performance within a period of sixty days, then the servicing fees would be suspended.[5] The Servicing Agreement contemplates that the investment funds can declare a credit agreement "to be non-performing," which triggers a sixty-day cure right on the part of the Lender.[6]

Between February and September 2022, the Lender sourced loans to three law firms totaling roughly $220 million—loans that investment funds funded. Thereafter, Calumet alleged that "the Investor became interested in taking the lending business for itself."[7] In particular, Calumet principally alleged that Victory Park: (1) restricted the Lender's principals' access to cash; (2) misused the investment funds' right of first offer; (3) circumvented the Lender by developing its own relationships with the law firm borrowers; (4) recruited one of Calumet's principals to help create a competing business named "Bespoke Capital"; (5)

pushed the Lender to "exit the post-settlement loan business and focus on pre-settlement loans"[8]; (6) poached Keel Harbour (a placement agent that was retained by Lender); and (7) made a "predatory lowball offer"[9] to purchase Calumet's interest in the Lender for $250,000.[10] After the Lender rejected the Investor's offer, the investment funds designated—without supplying any reasons—all of the Lender's credit agreements as non-performing. This designation "cut[] off the Lender's primary revenue stream."[11]

Given that there was "nothing that the Lender could cure"[12] due to the lack of any basis for the investment fund's designation, a suspension period commenced, in which all of the servicing fees to the Lender went to the investment funds instead. Calumet alleged that the Investor had effectively taken control of the Lender; the Investor removed the Lender as the servicing agent, causing the Lender to lose hundreds of thousands of dollars in servicing fees.

In January 2025, Calumet filed an action on behalf of the Lender, asserting several causes of action against the Investor. The Court addressed Calumet's: (I) breach of fiduciary duties claim as to Luke Darkow (an employee of the Investor who was designated to serve as the Investor Manager on the Lender's board); (II) claim that Investor aided and abetted Darkow in breaching his fiduciary duties; (III) breach of contract claim against the investment funds as to the Servicing Agreement; and (IV) contention that the Investor breached the implied covenant of good faith and fair dealing in the Investment Agreement by exploiting Calumet's right of first offer. The Investor moved to dismiss the Lender's Complaint for failure to state claims on which relief can be granted.

The Court of Chancery's Decision

The Court of Chancery sustained all of Calumet's claims, denying the Investor's motion to dismiss.

Breach of Fiduciary Duty. Calumet alleged that Darkow breached the fiduciary duties that he owed as the Investor Manager by harming the Lender and for the benefit of the Investor. Defendants argued that the LLC Agreement had language waiving all fiduciary duties and "substitutes a contractual obligation not to engage in fraud or willful misconduct."[13]

The Court interpreted the Protective Provision in the LLC Agreement, dividing it into three components: (1) "Elimination Language," which purported to eliminate a covered person's fiduciary duties; (2) "Exculpation Language," which provided that a covered person "shall not be liable" except "as otherwise specifically provided in this Agreement"[14]; and (3) "Preserving Language," which stated that the foregoing provisions replaced a covered person's duties and liabilities, "other than an act or omission which constitutes fraud or willful misconduct."[15]

The Court identified two plausible readings of how the Elimination Language interacted with the Preserving Language. Under the "Fiduciary-Exception View," the Preserving Language creates an exception to the Elimination Language that "allows existing law—including the law governing fiduciary duties—to continue to apply when the conduct involves fraud or willful misconduct."[16] Under the "Contract-Only View," the Elimination Language eliminates all non-contractual duties, and the Preserving Language creates a new contractual obligation not to engage in fraud or willful misconduct.

The Court held that under either reading, if the complaint supports an inference of fraud or willful misconduct, the litigation should proceed past the pleading stage. In the Court's estimation, the Fiduciary-Exception View controlled, reasoning that under Delaware law, drafters "must make their intent to eliminate fiduciary duties plain and unambiguous,"[17] and that interpretive scales tip in favor of preserving fiduciary duties.

According to the Court, the allegations laid out in the Complaint supported the "inference that Darkow acted in bad faith, which is a species of willful misconduct falling within the Preserving Language."[18] Further, the Court found it reasonably conceivable that Darkow breached his fiduciary duties. As Investor Manager, Darkow was a "dual fiduciary"[19] who owed duties both to Victory Park (his

employer) and the Lender (of which he was a manager). According to the Court, Darkow acted disloyally to harm the Lender so that the Investor could take the business—subverting one of Calumet's principals, extracting confidential information, and convincing him to leave and help develop a competing business.

***Aiding and Abetting*.** The Court concluded that the Complaint's allegations support a reasonable inference that the Investor aided and abetted Darkow's breach of fiduciary duties. Defendants relied on the Delaware Supreme Court's recent decisions in *Mindbody* and *Columbia Pipeline* (discussed previously in Quorum here), which heightened the pleading standard for aiding and abetting claims. The Court found them inapposite, stressing that those cases involved claims against third-party acquirers who are "expected to bargain in [their] own interest,"[20] warranting a higher pleading burden. Here, by contrast, the Court indicated that the claim was "simply that the Investor carried out its scheme both with and through Darkow, its employee."[21] Knowledge of Darkow's breach was imputed to Victory Park "because Darkow [was] the Investor's agent and acted on its behalf."[22]

***Breach of Servicing Agreement*.** The Lender alleged that the investment funds breached the Servicing Agreement by designating the credit agreement as non-performing. The Court held that "[w]hen a contract uses a term like 'reasonable' and 'reasonably,' the provision incorporates both a subjective and objective component."[23] "Subjectively, the party making the decision must have actually believed the justification proffered"; objectively, "the court must agree that an objective, reasonable person would view the justification as sufficient."[24]

On the subjective prong, the Court identified several factors supporting an inference that the investment funds did not believe their own designation: (1) around the same time, the Investor represented to the IRS, its auditors, its investors, and a borrower that the loans were in good standing and fully performing; (2) the designation was made minutes after the Lender rejected the Investor's lowball buyout offer, without providing any justification; (3) the designation was inferably part of the Investor's broader campaign to weaken the Lender; and (4) the investment funds ignored the Lender's requests for guidance on how to cure the non-performance. The same factors supported the conclusion that the designation was not objectively reasonable, as the timing was "inferably tactical, pretextual, and part of the Investor's systematic campaign to weaken the Lender and take the business."[25]

***Breach of Implied Covenant of Good Faith and Fair Dealing*.** The Investor alleged that the investment funds breached the implied covenant of good faith and fair dealing inherent in the Investment Agreement. Defendants argued that the Investment Agreement authorized the Investor Funds to exercise the right of first offer in their "sole discretion," precluding an implied covenant claim. The Court rejected this argument, pointing to *Miller v. HCP Trumpet Investments, LLC* for the proposition that "the mere vesting of 'sole discretion' [does] not relieve the [holder] of its obligation to use that discretion consistently with the implied covenant of good faith and fair dealing."[26] In addition, the Court articulated a standard for assessing good faith: a party violates the implied covenant if it exercises a discretionary right "for the sole purpose of harming its counterparty"[27] without any contractually grounded justification. The Court stated that while a party can exercise discretionary rights to promote contractual goals or protect its own interests, "a party cannot wield a discretionary contractual right like a mafia gangster by using it to inflict harm on the counterparty unless the counterparty does what it wants."[28]

Takeaways

- **Draft fiduciary duty waiver provisions with precision.** The Court's decision underscores the critical importance of clear and unambiguous drafting when seeking to eliminate or modify fiduciary duties in LLC or partnership agreements. Lengthy or detailed provisions that combine duty modification and exculpation in a single clause are susceptible to judicial interpretation that fiduciary duties were not fully eliminated.

- **Beware of exculpation language undermining duty elimination.** Relatedly, the inclusion of exculpation language for fiduciary breaches may be interpreted as evidence that fiduciary duties were not fully eliminated. If the intent is to fully eliminate fiduciary duties, drafters should consider clarifying that any exculpation language has been included solely in the event a court nonetheless finds any fiduciary duties applicable.

- **Dual fiduciaries and aiding and abetting exposure.** This decision highlights the heightened risk of aiding and abetting liability when an employer designates its employee to serve on a portfolio company's board. At the pleadings stage, a court may be inclined to impute to an employer knowledge of the employee-fiduciary's breach. Participation may be easily inferred.

- **"Reasonable judgment" invokes both subjective and objective tests.** Parties granting or receiving rights to make determinations in their "reasonable judgment" should understand that such provisions incorporate both a subjective test (did the party actually believe its justification?) and an objective test (would a reasonable person view the justification as sufficient?). Parties should consider specifying the criteria or process for making such judgments and maintaining a contemporaneous record of the reasoning supporting any such determination.

- **"Sole discretion" does not insulate a defendant from implied covenant claims.** Parties who receive the contractual right to act in their "sole discretion" should understand that this language does not displace the implied covenant of good faith and fair dealing. While parties cannot contractually agree to waive the implied covenant, they can define parameters and standards by which discretion is to be exercised, which may help set expectations.

[1] The Defendants: Victory Park Capital Advisors, LLC; Janus Henderson US (Holdings) Inc.; MRAH Splitter I, L.P.; VPC Invesetor Fund B II, LLC; VPC Investor Fund M, L.P.; VPC Legal Finance Fund Holdings, L.P.; Richard Levy; Brendan Carroll; Luke Darkow; and Chad Clamage.

[2] The Lender consists of two members: Calumet Principals LLC (the "Calumet Member") and MRAH Splitter I, L.P. (the "Investor Member"). Calumet controlled the Calumet Member, while the Investor controlled the Investor Member.

[3] *Calumet Cap. Partners LLC*, 2026 WL 374887, at *8.

[4] *Id.* at *26.

[5] *Id.* at *3.

[6] *Id.* at *19.

[7] *Id.* at *3.

[8] *Id.* at *4.

[9] *Id.* at *5.

[10] At the time of the offer, the Investor's interest had increased to 20% as a result of a LLC Agreement provision that allowed the Investor's interest to increase from 10% to 20% for no additional consideration if the Lender failed to raise $100 million in additional capital within the investment period.

[11] *Id.* at *21.

[12] *Id.*

[13] *Id.* at *7.

[14] *Id.* at *8.

[15] *Id.*

[16] Id.

[17] *Id.* at *14 (quoting *Bay Ctr. Apartments Owner, LLC v. Emery Bay PKI, LLC*, 2009 WL 1124451, at *9 (Del. Ch. 2009)).

[18] *Id.* at *10.

[19] *Id.* at *12.

[20] *Id.* at *17.

[21] *Id.*

[22] *Id.* at *18.

[23] *Id.* at *20 (quoting *Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Anduril III, L.P.*, 342 A.3d 1166, 1210 (Del. Ch. 2025)).

[24] *Id.* at *20 (internal citations and quotations omitted).

[25] *Id.* at *21.

[26] *Id.* at *25 (internal quotations and citations omitted).

[27] *Id.* at *27.

[28] *Id.* at *29.