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Delaware Court Refuses to Enforce Earn-Out Condition Allegedly Frustrated by Buyer


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On February 10, 2026, the Delaware Superior Court issued a notable decision in *Monica, et al. v. Delta Data Software, Inc.*,[1] addressing the treatment of earn-out conditions where post-closing conduct allegedly affects whether those conditions occur. The Court permitted breach of contract claims to proceed based on allegations that the buyer delayed a customer payment until after the contractual earn-out deadline, holding that the complaint adequately alleged breach under the implied covenant of good faith and fair dealing and Delaware's prevention doctrine.

The decision indicates that a party may not rely solely on the mechanical terms of an earn-out provision where it is alleged to have caused the failure of a condition to payment, and it underscores that disputes alleging interference with earn-out conditions may present contractual—not just accounting—issues under Delaware law.

Background

This case concerned an earn-out dispute between former owners of software company Phoenix Systems, Inc.: Alexander Monica, Judy Koch, Joanne Garton, Sandra Perkowitz, Al Gesite, and Bruce Brown (collectively, "Plaintiffs")—and Delta Data Software, Inc. ("Defendant"). In March 2024, the parties executed a Stock Purchase and Contribution Agreement (the "SPCA") under which Delta Data purchased Phoenix and agreed to pay an earn-out if Phoenix's 2024 annual recurring revenue ("ARR") exceeded a set threshold. The SPCA limited contracts that could be counted toward the ARR to those (i) entered into on or before December 31, 2024; (ii) in effect on March 31, 2025; (iii) containing a minimum one-year term; and (iv) under which an initial payment is made on or before March 31, 2025. If the ARR target was met, the earn-out was payable by April 1, 2025.

After the sale, plaintiff Alexander Monica remained at Delta Data as Vice President of Business Development and negotiated a new customer contract. The customer wanted services immediately but requested payment to be deferred until after the March 31, 2025 deadline, which would have excluded the contract from the ARR calculation. Monica warned Delta Data's chief revenue officer that the delayed payment could jeopardize the earn-out. The Chief Revenue Officer and Chief Executive Officer assured Monica that the contract would still count if signed before the end of September 2024 and, as a result, Monica did not negotiate for earlier payment terms and the parties executed a Master Services License Agreement (the "MSLA") on September 30, 2024, reflecting the delayed-payment arrangement, which required payments on the earlier of June 1, 2025, and a defined acceptance date.

Following the acceptance date under the MSLA, Delta Data invoiced the customer on January 28, 2025, with payment due March 29, 2025. Plaintiffs alleged

Delta Data made no effort to collect the invoice and told the customer that the invoice could be voided, purposefully preventing the payment from being made before the ARR cutoff. Had the customer paid, the 2024 ARR would have met the earn-out threshold, entitling Plaintiffs to $2,328,806.25.

In May 2025, Plaintiffs filed suit in Delaware Superior Court alleging breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and seeking punitive damages, interest, and attorneys' fees. Delta Data moved to dismiss for failure to state a claim and argued that the SPCA required resolution of the questions presented by an accounting firm.

The Delaware Court's Decision

The Delaware Superior Court (Hon. Patricia A. Winston) held that Plaintiffs' breach of contract claims could proceed on two distinct legal theories: an implied covenant claim and a claim grounded in the "prevention doctrine."

Implied covenant claim. The Court reiterated that a breach of the implied covenant of good faith and fair dealing, under Delaware law, is a "cautious enterprise" and an "extraordinary legal remedy" that requires pleading (i) a specific implied contractual obligation, (ii) a breach of that obligation, and (iii) resulting damage.[2] Recognizing that the SPCA was silent as to Defendant's post-closing actions and efforts required to achieve the earn-out, in the court's estimation, Plaintiffs pled an implied obligation that Defendants breached. The complaint satisfied each element by alleging that Delta Data "took affirmative acts to prevent the Customer from making payment on the MSLA for the purpose of undermining Plaintiffs' right to an Earn-out Payment."[3]

The Court found it reasonable for the parties to expect that Delta Data would not deliberately avoid receiving the customer payment before the March 31, 2025 deadline, and therefore, the implied covenant elements were met. The Court noted that the parties agreed to an earn-out payment dependent on Delta Data receiving certain customer payments before March 31, 2025. Accordingly, the claim was allowed to proceed and Plaintiffs were permitted to seek interest and attorneys' fees for breach under the SCPA.

Prevention doctrine claim. Delaware courts—and the Restatement (Second) of Contracts[4]—recognize that a party's own breach can excuse the non-occurrence of a contractual condition when the breach materially contributes to that failure.[5] The complaint asserted that after Delta Data issued an invoice due March 29, 2025, it neither pursued collection nor warned the customer that the invoice could be voided, actions that effectively precluded the payment from being made before the March 31, 2025 deadline.

The Court held that the alleged conduct plausibly breached the implied covenant and, if proven, would excuse the non-occurrence of the payment condition under the prevention doctrine. Accordingly, because the alleged conduct directly caused the payment condition to fail, the breach of contract claim survived on the basis of the prevention doctrine.[6]

Fraud claim. The Court applied the heightened pleading standard of Rule 9(b), which requires specific factual allegations showing that the defendants possessed a fraudulent intent at the time of the alleged promise. While the complaint asserted that the CRO and the CEO promised the contract would count toward the earn-out even if payment was delayed, it did not allege facts indicating that those executives "had no intention of keeping" the promise.[7] Because the complaint fell short of the specificity required, the fraud claim—and the attendant request for punitive damages—was dismissed.

Dispute resolution provision. Delta Data moved to stay the case, arguing that the SPCA mandated resolution by an accounting firm. The Court examined Section 2.4(a) of the SPCA, which directs earn-out payment disputes to the procedures in Section 2.2(c), including resolution by an accounting firm. Section 2.2(c), however, was limited to "'assign[ing] a value' to 'line items' and the

'calculations' resulting from those values,"[8] tasks appropriate for an accounting firm. Differentiating between an arbitration and expert determination, the Court held that the present dispute hinges on alleged wrongful conduct, breach of the implied covenant, and fraud—legal questions outside an accounting firm's expertise—so the contractual "Accounting Firm" provision does not apply and the case must proceed in court.[9]

Takeaways & Practice Points

- Under Delaware law, a buyer may not rely on a purely mechanical earn-out provision to engineer its failure; intentional manipulation may implicate the implied covenant of good faith and fair dealing and provide the seller with a contractual remedy.
- The prevention doctrine, rooted in a breach of the implied covenant, can excuse the non-occurrence of an earn-out condition and permit a direct breach of contract claim, potentially allowing recovery of the lost earn-out amount and other contractual remedies *(e.g.*, indemnification, fees).
- Absent explicit contractual language, a dispute resolution clause delegating certain matters to an accountant does not deprive a court of authority to evaluate wrongful conduct; the *Monica* decision distinguishes accounting matters (such as calculations and GAAP compliance) from issues of conduct, intent, and good faith, which remain within the court's purview. Contracting parties should consider clearly delineating the authority of an accountant in dispute resolution provisions, including whether an accountant is intended to act as an expert or an arbitrator.
- The court's dismissal of the fraud claim reflects Delaware courts' tendency to treat earn-out manipulation as a contractual breach rather than fraud absent particularized allegations of intentional misrepresentation.
- Contracting parties should carefully negotiate earn-out provisions in sale agreements and not rely on a "rare case where the implied covenant"[10] Buyers may consider clearly defining discretion over earn-out conditions and post-closing business operations.
- Sellers, by contrast, should consider including explicit efforts covenants on the buyer to satisfy earn-out conditions, or addressing whether the buyer may deprioritize or delay actions affecting the earn-out.
- Consistent with Delaware precedent,[11] the decision confirms that intentional frustration of a contractual condition can give rise to enforceable contract claims; Delaware courts continue to focus on the parties' intent and good-faith performance in allocating risk and liability.

1 *Monica, et al. v. Delta Data Software, Inc.*, No. N25C-05-185 PAW CCLD, 2026 WL 370756 (Del. Super. Ct. Feb. 10, 2026).

2 *Id.* at *6 (internal citations and quotations omitted); *see also Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1117-18 (Del. 2022) (cleaned up).

3 *Monica*, 2026 WL 370756, at *7.

4 *See* Restatement (Second) of Contracts § 245; *see also id.* cmt. b ("Although it is implicit in the rule that the condition has not occurred, it is not necessary to show that it would have occurred but for the lack of cooperation. It is only required that the breach have contributed materially to the non-occurrence.").

5 *Monica*, 2026 WL 370756, at *9; *see also, e.g.*, *WaveDivision Hldgs., LLC v. Millennium Digital Media Sys., L.L.C.*, No. 2993-CVS, 2010 WL 3706624, at *14-15 & n.110 (Del. Ch. 2010).

6 *WaveDivision Hldgs., LLC*, 2010 WL 3706624, at *14 (stating that "[i]t is an established principle of contract law that '[w]here a party's breach by nonperformance contributes materially to the non-occurrence of a condition of

one of his duties, the non-occurrence is excused.'"); *see also*, *e.g.*, *Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717, 725 (4th Cir. 2000) ("The prevention doctrine is a generally recognized principle of contract law according to which if a promisor prevents or hinders fulfillment of a condition to his performance, the condition may be waived or excused.").

7 *Monica*, 2026 WL 370756, at *10-11.

8 *Id.* at *14 (citing SPCA § 2.2(c)).

9 *Id.*

10 *Id.* at *6.

11 *See*, *e.g.*, *Am. Cap. Acquisition P'rs, LLC v. LPL Hldgs., Inc.*, No. 8490-VCG, 2014 WL 354496, at *7-8 (Del. Ch. 2014) (denying motion to dismiss in a case where defendants "affirmatively act[ed] to gut [the acquired company]" by pivoting sales to one of the acquiror's subsidiaries to "minimize payments under the [pertinent contracts]").

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