

CASE NOTES

Delaware Bankruptcy Court Grants Motion to Dismiss Deepening Insolvency and Texas Statutory Fiduciary Duty Claims With Prejudice

By Marcos A. Ramos

[*Stanziale v. Heico Hldgs., Inc. et al.*](#), Adv. Proc. No. 13-50941 (Bankr. D. Del. Aug. 8, 2014)

In *Stanziale v. Heico Hldgs., Inc.*, et al., the United States Bankruptcy Court for the District of Delaware granted a motion to dismiss deepening insolvency and Texas statutory fiduciary duty claims with prejudice but granted the chapter 7 trustee 30 days to file an amended complaint sufficient to state a common law breach of fiduciary duty claim under Texas law.

Debtor Conex International, LLC was a general mechanical contractor and wholly owned by Conex Holdings, LLC. The plaintiff was duly appointed as the debtor's chapter 7 trustee. Defendants included Heico Holding, Inc.— the 100 percent holder of interest in Conex Holdings, LLC—and certain individual defendants alleged to have been officers and/or directors of either Conex, Heico, Heico-affiliated entities, or some combination of the foregoing (collectively, the “individual defendants”).

The trustee's complaint included a breach of fiduciary duty claim against the individual defendants. As alleged by the trustee, the individual defendants caused the insolvent debtor to cease paying certain creditors and instead to pay fraudulent and preferential transfers to Heico. The trustee alleged that the individual defendants thereby breached fiduciary duties to the debtor under the common law and Section 3.307 of the Texas Business and Commerce Code, and caused the deepening insolvency of the debtor. The individual defendants moved to dismiss these claims.

The court noted that “[t]hreadbare recitals . . . supported by mere conclusory statements” will not survive a motion to dismiss and the “facial plausibility” pleading standard applies to all civil suits. A claim is facially plausible when sufficient factual content is pled that allows the court to “draw the reasonable inference that the defendant is liable for the misconduct alleged. Determining whether a complaint is ‘facially plausible’ is a ‘context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’”

The debtor was a Texas LLC and the court applied Texas law to the breach of fiduciary duty claim. However, the court also noted that Texas approves the court's resort to Delaware corporate law to guide its decision in the absence of any conflict with Texas law.

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Under Texas law, corporate directors owe duties of obedience, loyalty, and due care. Here, the individual defendants argued that the trustee did not state a common law breach of fiduciary duty claim because the trustee grouped the individual defendants together as “officers and directors” and did not allege specific facts regarding each individual defendant’s specific wrongdoing. The court agreed. It cited to cases that granted motions to dismiss based on group allegations and theories of “collective responsibility” and where claims against specific defendants did not include allegations regarding the defendant’s individual conduct and participation in the wrongdoing. The court, however, granted the trustee 30 days to file an amended complaint to include specific allegations regarding each individual defendant’s own conduct sufficient to state a claim for common law breach of fiduciary duty.

The court, however, granted the individual defendants’ motion to dismiss with prejudice the trustee’s breach of fiduciary duty claim to the extent that it relied on Section 3.307 of the Texas Business and Commerce Code. As described by the court, that statute did not provide a basis for the trustee’s breach of fiduciary duty claim and was inapposite to the facts at issue.

The court similarly dismissed (with prejudice) the trustee’s claim to the extent that it asserted that the individual defendants caused the “deepening insolvency” of the debtor. “Deepening insolvency . . . is not a cause of action under Delaware or Texas law.”

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