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Chancery Court in *Brookstone* Underscores Primacy of Comity and Efficiency

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In *Brookstone Partners Acquisition XVI v. Tanus*, C.A. No. 7533-VCN, (Del. Ch. Nov. 20, 2012), Vice Chancellor John W. Noble, on the defendants' motion and citing the long-standing *McWane* doctrine, stayed a later-filed Chancery Court action in favor of a first-filed Texas proceeding. In concluding that principles of comity and judicial efficiency favored a stay, the court reaffirmed a long line of cases that have inexorably prioritized first-filed actions in other jurisdictions in order to prevent duplication of efforts and potentially conflicting results. In addition, the court left its own mark on the *McWane* framework, making clear that application of that doctrine is appropriate even where one of the parties may have engaged in defensive forum shopping.

Brookstone is a member of Woodcrafters Home Products Holding LLC, a Delaware limited liability company governed by a six-person board of managers. Brookstone designates two of the company's managers, with the remaining four designated by entities controlled by defendant Abraham Tanus. Tanus is an officer of the company and is also the chief executive officer of Woodcrafters Home Products LLC, which is fully owned by the company. On May 1, following Tanus' acquisition of two important suppliers to the company, Tanus sued Brookstone and other parties in a Hidalgo County, Texas, district court, seeking a declaratory judgment that he did not breach his employment agreement with the company or Woodcrafters' amended and restated limited liability company agreement in connection with acquiring one of the suppliers, Design Imaging. Brookstone, in turn, brought suit May 15 in the Delaware Court of Chancery, essentially alleging that Tanus had breached his employment agreement, the LLC agreement and his fiduciary duties by acquiring the two suppliers "without providing sufficient information to the board to consider these acquisitions," and by taking other steps to devalue the company and, correspondingly, Brookstone's option to sell it after February 2013, for which entities controlled by Tanus have a right of first refusal.

In response to Tanus' motion to dismiss (or alternatively, to stay) the proceedings in Delaware, Noble was called upon again to revisit the tried-and-true first-filed rule articulated in *McWane Cast Iron Pipe v. McDowell-Wellman Engineering*, 263 A.2d 281 (Del. 1970).

Earlier this year, Noble issued a similar opinion staying a later-filed Delaware action in *ODN Holding v. Hsu*, C.A. No. 6790-VCN (Del. Ch. Mar. 30, 2012). Under *McWane*, in the court's discretion, deference is given to the forum in which litigation is first brought, and an opposing party is not permitted to defeat the plaintiff's choice of forum by attempting to litigate the same cause of action in another jurisdiction. Principles of comity, judicial economy, fairness and an interest in avoiding the possibility of inconsistent results also favor staying the later-filed action. Specifically, the *McWane* doctrine supports a stay when (1) a prior action is pending in another jurisdiction, (2) involving the same parties, (3) litigating the same issues, and (4) the court in the foreign forum is capable of according prompt and complete justice.

In *Brookstone*, the first factor was readily satisfied, as the parties did not dispute that the Texas action was filed first. While noting an exception to the deference commonly afforded to first-filed actions where "jockeying for position" leads to seeking a "declaratory judgment for the purpose of defensively establishing priority as to forum," Noble ultimately accorded greater weight to conserving judicial resources and avoiding the risk of conflicting interpretations. Furthermore, despite recognizing that, "unquestionably, the Delaware action has more breadth and depth than the Texas action," the court opted to follow other recent Delaware decisions holding that neither complete identity of issues or parties is necessary, as long as the actions in question are closely related and arise from a common nucleus of operative fact, and procedural tools, such as joinder, are available to remedy any functional disparities between the named parties. (See, e.g., *Mine Safety Appliances v. AIU Insurance*, C.A. No. N10C-07-241 MMJ (Del. Super. Jan. 24, 2011); *Glen Rose Petroleum v. Langston*, No. 5387-CC (Del. Ch. July 7, 2010).) Additionally, notwithstanding Brookstone's invitation that the court wade into the recent vigorous discussions among the Delaware courts regarding fiduciary duties in the context of limited liability companies — see. e.g., *Gatz Properties v. Auriga Capital*, C.A. No. 4390 (Del. Nov. 7, 2012) — Noble determined that the contract interpretation and fiduciary duty issues before him did not amount to novel or complex issues of law that were worthy of circumventing *McWane*. Finally, Noble declined to extend *Raymond Revocable Trust v. Mat Five*, C.A. No. 3843-VCL (Del. Ch. June 26, 2008), distinguishing it on the ground that, unlike the actions filed by Tanus and Brookstone, which bore "significant" similarities, the competing actions in *Raymond* "had 'some overlapping facts' but none that arose from the same transaction."

In short, Noble's opinion in Brookstone affirms and reinforces that, in the absence of genuinely novel or significant questions of Delaware law, the Delaware courts will steer clear of possible incongruous results and the inefficient use of judicial resources in addressing later-filed actions, even absent a complete identity of parties and issues.

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