



When is a deal *actually* a deal under Texas law? The Texas Supreme Court weighs in again

Corporate Alert

Litigation Alert

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In *Chalker Energy Partners III, LLC v. Le Norman Operating, LLC*, the latest in a series of commercial decisions from its 2019/2020 term, the Texas Supreme Court went back to basics – addressing when and how a contract is formed.

For would-be buyers and sellers, the key takeaways are simple, but important.

- First, Texas law will respect – as a *matter of law* – the stated intent of the parties not to be bound to a deal absent certain conditions precedent. In other words, Texas courts will respect a clause in a preliminary agreement, like a data-room non-disclosure agreement (NDA), not to be bound to a deal except and unless later papered up by a formal definitive agreement like a purchase and sale agreement (PSA).
- Second, the clause's language must be clear and unequivocal. It should clearly state that no legal obligations will be created unless and until a definitive agreement has been executed.
- Third, in the presence of such a clause, proof of a definitive agreement becomes a condition precedent to a plaintiff's later claim for breach regardless of correspondence later allegedly agreeing to material terms.
- And fourth, although the parties can waive any condition precedent, to avoid summary judgment, there must be

evidence of an intentional relinquishment of the right to a definitive agreement.

In *Chalker*, Le Norman, a bidder for assets being sold by Chalker, sued Chalker alleging that Chalker's later acceptance of a higher bid breached what Le Norman contended was a completed deal, finalized by email exchanges. Le Norman also sued the winning bidder for Chalker's assets for tortious interference with contract.

The trial court granted summary judgment for Chalker, concluding that (1) Chalker and Le Norman did not intend to be bound to any agreement, (2) entering into a PSA – which did not occur – was a condition precedent to forming a contract, and (3) there was no meeting of the minds in light of a no-obligation clause in a data-room NDA agreement. The First Court of Appeals in Houston reversed, holding that email exchanges, which contained an apparent agreement to the deal's material terms created a fact issue.

The Texas Supreme Court disagreed. Citing the data-room NDA agreement, the court held that “including the No Obligation Clause in the Confidentiality Agreement, Chalker and LNO agreed that a definitive agreement was a condition precedent to contract formation.” The court also rejected Le Norman's claim that the email correspondence waived that condition precedent because there was no evidence in the emails “of an intentional relinquishment of the right to a definitive agreement secured by the No Obligation Clause.”

The language of the No Obligation Clause, which will undoubtedly serve as a model for others going forward is reproduced below.

No Obligation. The Parties hereto understand that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a transaction between the Parties shall be deemed to exist and neither Party will be under any legal obligation of any kind whatsoever with respect to such transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specially agreed to herein. For purposes of this Agreement, the term “definitive agreement” does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties.

Chalker and the other key commercial cases from this term – *Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.* and *Copano Energy, LLC v. Bujnoch* – show that the Texas Supreme Court has charted a very deliberate course to provide, in its words, “certainty” to parties doing business in Texas.

The case is No. 18-0352; *Chalker Energy Partners III, LLC v. Le Norman Operating, LLC*, in the Supreme Court of Texas. The opinion is available [here](#).

For analysis of the *Enterprise* case, please [click here](#).

Find out more about the implications of this decision by contacting either of the authors or your usual DLA Piper attorney.

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