

Delaware General Corporation Law Section 111: a gateway to Chancery?

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In 1999, the Delaware Legislature enacted 8 Del. C. § 111 for the purpose of extending the Delaware Court of Chancery's jurisdiction to disputes arising from the application, interpretation, enforcement, or validity of the certificate of incorporation and bylaws of a Delaware corporation. The Court of Chancery is a Court of limited jurisdiction, generally focused on equitable claims and requires a specific grant of jurisdiction.

Since first enacted, Section 111 has been expanded and provides the Court of Chancery with jurisdiction over many additional instruments, including, among others, stock purchase agreements, documents containing transfer restrictions, voting trust agreements, and certificates of merger. Importantly, Section 111 uses language traditionally interpreted as permissive in nature; Section 111 provides that actions covering those instruments "may be brought in the Court of Chancery." (emphasis added). As a result, there has been some question whether more was needed to confer jurisdiction in the Court of Chancery than facial application of the statute.

This question surfaced in a 2019 decision in *Helix Generation LLC v. Transcanada Facility USA, Inc.* In that case, the Court held that it had discretion in the circumstance of that case to transfer the case to Superior Court, even though the matter arguably fell under Section 111. This led to some ambiguity as to whether the Court should interpret the statute to provide it discretion to decline jurisdiction.

The ambiguity remained until the Court's 2022 decision in *Shareholder Representative Services LLC v. DC Capital Partners Fund II, L.P.* That case held that Section 111 provided non-discretionary jurisdiction in the Court of Chancery once a plaintiff commences an action in that Court.

To resolve the ambiguity and potential conflict between the Court of Chancery's decisions in *Helix* and *DC Capital*, the Delaware Supreme Court recently accepted an interlocutory appeal in *DC Capital* to determine whether Section 111 confers discretionary jurisdiction in the Court of Chancery.

The *Helix* decision

In *Helix*, the plaintiff brought breach of contract and fraud claims in connection with an asset purchase agreement and alleged that the Court of Chancery had personal jurisdiction under the parties' contract. However, the plaintiff failed to allege how the Court had equitable jurisdiction over its claims.

Defendants moved to dismiss under Rule 12(b)(6) for failure to state a claim. After briefing had concluded on the defendants' motion to dismiss, the Court, *sua sponte*, questioned whether equitable jurisdiction existed and asked the parties to submit supplemental responses on this issue.

In response, the plaintiff argued that statutory jurisdiction existed under Section 111, which provided that actions to interpret, apply, enforce or determine the validity of an agreement "by which a corporation agrees to sell, lease or exchange any of its property or assets" and provides "by its terms" for stockholder approval may be brought in the Court of Chancery.

The plaintiff argued because it was a subsidiary, its parent company must have approved of the asset purchase agreement and that such approval therefore could be considered "by its terms" to be required. The plaintiff sought leave to amend so it could assert those allegations in its complaint.

In deciding not to exercise jurisdiction over the plaintiff's claims, the Court reasoned that "Section 111(a), to the extent it applies, provides permissive, not mandatory, jurisdiction in this Court." The Court reasoned that the proposed amendment to the complaint would require the Court and the parties to make a determination of Chancery jurisdiction, which could involve jurisdictional discovery, in a situation where the Superior Court unquestionably had jurisdiction to hear the "legal" action.

Ultimately, the Court determined that the potential amendment and discovery would be "valueless" because the Superior Court could hear the action and the parties had agreed to stand on the complaint and briefing on the motion to dismiss. Accordingly, the Court transferred the matter to the Superior Court.

The *DC Capital Partners* decision

For the next three years, *Helix* was the primary authority on the question of whether Section 111 conferred permissive jurisdiction. Given the context in which the issue arose in that case, it left some doubt as to whether the Court of Chancery would have discretion to decline jurisdiction where the initial complaint adequately pleaded compliance with Section 111. Recently, the Court in *DC Capital* came to the conclusion that Section 111's jurisdiction was not discretionary.

In *DC Capital*, the plaintiff sued to compel buyers to pay indemnity holdbacks owed under a stock purchase agreement. The parties agreed that the agreement was within the scope of Section 111. Nevertheless, the defendants moved to dismiss, arguing: (1) the permissive language of Section 111 grants the Court of Chancery nonexclusive or concurrent jurisdiction; (2) the Court has discretion to decline jurisdiction over actions brought under Section 111; and (3) the Court should exercise its discretion to deny jurisdiction because the claims did not implicate the Court's specialized expertise.

Instead, the defendants argued there was an adequate remedy at law because the complaint primarily sought monetary relief and therefore the Court of Chancery should exercise its discretion to decline jurisdiction.

The Court agreed that Section 111 conferred on the Court nonexclusive jurisdiction; however, the Court concluded such jurisdiction was non-discretionary. The Court reasoned that the plain language of Section 111 favored that interpretation because the statute says that any civil action "may" be brought in the Court of Chancery and only plaintiffs, not the Court, can bring an action. Thus, the statute authorizes plaintiffs to bring the types of actions described in Section 111 in the Court of Chancery, and the Court does not have discretion to decline such actions otherwise so authorized.

In support of its determination, the Court relied on the Delaware Supreme Court's 2012 decision in *Duff v. Innovative Discovery LLC*. In that case, the Delaware Supreme Court held that the Delaware Limited Liability Company Act, which similarly provided that "[a]ny action to interpret, apply or enforce the provisions of a limited liability company agreement ... , may be brought in the Court of Chancery," did not permit the Court discretion to decline subject matter jurisdiction. (emphasis added).

In addressing the *Helix* decision, the Court emphasized the fact that the Superior Court had unquestionable jurisdiction in that case. While the applicability of Section 111 was in question, the decision should not be read to require a discretionary application of Section 111.

The Court also determined there was no substantive comment on the legislation that would give insight into the intent of the Legislature. And, when considering the canon of statutory interpretation that a statute should be read with a presumption against changes to the common law, it provided "soft support" for the Court's interpretation because Delaware's common law traditionally placed great weight on a plaintiff's choice of forum. Therefore, the Court denied the motion to dismiss.

Interlocutory appeal

On March 15, 2022, the *DC Capital* Court certified an interlocutory appeal sought by the defendants, reasoning that its prior decision resolved a substantial issue of law. On March 28, 2022, the Delaware Supreme Court accepted the interlocutory appeal. Briefing was complete as of June 16, 2022, but no argument yet has been scheduled.

Takeaway

The Supreme Court's pending decision will be an important step in determining the scope of the Court of Chancery's jurisdiction under Section 111. It will determine the extent to which, if at all, a plaintiff will be able to use Section 111 as a gateway to the Court of Chancery absent an underlying equitable claim or an issue that otherwise implicates the Court of Chancery's specialized expertise. If jurisdiction is permissive, the door to Chancery may narrow.

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