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July 6, 2023

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WLF Urges Delaware Supreme Court To Enforce Contracts As Written

(Cantor Fitzgerald, LP v. Ainslie)

“When it comes to arm’s-length negotiations by sophisticated parties, the plain terms of the parties’ contract—not post-hoc public policy decrees from the bench—should prevail.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) yesterday filed an amicus brief with the Delaware Supreme Court, urging it to reverse a Chancery Court decision that invalidated part of a routine partnership agreement on public policy grounds. WLF’s brief was prepared and filed with assistance from Kenneth Gage and Daniel Richards of Paul Hastings LLP and Michael Vild and David Holmes of Cross & Simon LLP.

The appeal arises from a suit by former partners of Cantor Fitzgerald over their partnership agreement. The agreement contained a “forfeiture for competition” (FFC) provision. Under that provision, a former partner forfeits the right to additional capital disbursements if he engages in competitive activity during a four-year period during which he receives annual payouts from his capital account. Applying “reasonableness review,” the Chancery Court held that the agreement’s FFC provision was unreasonable and therefore invalid.

In its amicus brief urging reversal, WLF argues that the Chancery Court’s holding is at odds with Delaware law’s strong preference for freedom of contract. WLF also highlights the other checks on FFC provisions already available under Delaware law that, taken together with reasonableness review, would render most FFC provisions largely unenforceable. Finally, WLF details the many salutary purposes served by FFC provisions—namely, that they enable employers to offer generous benefits to employees and can ensure corporate stock grants do not go to waste.

Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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