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Texas Justices Say No Partnership, No $535M Pipeline Win

By **Michelle Casady**

Law360 (January 31, 2020, 10:23 AM EST) -- The Texas Supreme Court on Friday said there are no grounds to reinstate a $535 million judgment against Enterprise Products Partners LP because the pipeline developer never had a binding partnership to develop a crude oil line with Energy Transfer Partners LP.

In a case that had major ramifications for partnerships across industry sectors, the court ruled that Texas law permits parties to agree that no partnership will exist unless certain conditions are satisfied. Though state statute allows parties to form a partnership through their conduct, the court held no partnership was formed between ETP and Enterprise because certain conditions that the companies set out in a written agreement to market the pipeline weren't met.

“We hold that parties can conclusively negate the formation of a partnership under Chapter 152 of the [Texas Business Organizations Code] through contractual conditions precedent," the court held. "ETP and Enterprise did so as a matter of law here, and there is no evidence that Enterprise waived the conditions."

A Dallas County district court handed down the blockbuster $535 million judgment against Enterprise in 2014, after jurors found Enterprise wrongly ditched ETP as a partner to develop a crude oil pipeline from Oklahoma to the Gulf of Mexico. During the trial, ETP told jurors that its onetime partner unfairly jilted it, took a plum customer and teamed up with a rival to build a profitable pipeline.

ETP successfully argued its working relationship with Enterprise evolved after their initial agreement to market the pipeline and that they had formed a partnership through the conduct they engaged in after signing those initial agreements.

But the Fifth Court of Appeals reversed, holding in July 2017 that the unfulfilled conditions in the written agreements were crucial and that without meeting those conditions, the two companies couldn’t have formed a partnership.

According to court documents, ETP and Enterprise had decided in 2011 to work together to determine the viability of building the crude oil line. They signed a confidentiality agreement, a letter agreement stating the parties were entering into discussions about a pipeline, and later, a reimbursement agreement that allowed Enterprise to begin engineering and design work before the parties executed definitive agreements.

The letter agreement created two “conditions precedent” that had to be fulfilled before a partnership could be formed: it required approval by both parties’ boards of directors, and it required that the parties trade executed agreements memorializing the final terms of the deal.

ETP is represented by Jeremy Fielding of Kirkland & Ellis LLP, Michael Lynn, Chris Akin and David Coale of Lynn Pinker Cox & Hurst LLP, Nina Cortell and Kelli Bills of Haynes and Boone LLP and Craig Enoch and Melissa Lorber of Enoch Kever PLLC.

Enterprise is represented by David Keltner and Marianne Auld of Kelly Hart & Hallman LLP, David Beck, David Gunn, Russel Post and Jeff Golub of Beck Redden LLP, P. Michael Jung of Clark Hill

Strasburger and Wallace B. Jefferson and Rachel Ekery of Alexander Dubose & Jefferson LLP.

The case is Energy Transfer Partners LP et al. v. Enterprise Products Partners LP et al., case number 17-0862, in the Texas Supreme Court.

--Additional reporting by Keith Goldberg. Editing by Rebecca Flanagan.
