

DEAL V. TUGALO GAS CO.: ELEVENTH CIRCUIT ELECTS
NOT TO EXTEND THE *BURFORD* ABSTENTION DOCTRINE TO
JUDICIAL-DISSOLUTION CLAIMS

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In *Deal v. Tugalo Gas Co.*,¹ the U.S. Court of Appeals for the Eleventh Circuit addressed a laundry list of appeals stemming from a district court’s rejection of a plaintiff’s substantive claims as well as its decision to invoke the “*Burford* abstention” doctrine² for the plaintiff’s equitable claims.³ In an unusual decision, by declining to adjudicate the plaintiff’s three equitable claims—“for judicial dissolution, an accounting, and appointment of an auditor”—the district court extended the “long-lost (or nearly lost)” *Burford* doctrine to cover such claims.⁴ However, on appeal, while affirming the district court’s disposal of substantive claims, the Eleventh Circuit reversed and remanded the three equitable claims because the district court should not have abstained from deciding the claims under the *Burford* doctrine.⁵

Tugalo Gas Company is a family-owned Georgia corporation in which the plaintiff, William Deal, is a shareholder.⁶ Deal accused Thomas Gilmer, Deal’s cousin and Tugalo’s President, of “misus[ing] company funds to pay for personal expenses.”⁷ In addition, Deal also accused other Tugalo shareholders, directors, and employees of either assisting in Gilmer’s misconduct or engaging in some misconduct of their own.⁸ In 2017, after a previously unsuccessful suit in 2012, Deal made a shareholder demand—the first step in a derivative suit—on the Tugalo board, again alleging misconduct by Gilmer and others.⁹ Once a shareholder has made a demand on the corporation to take suitable action, the corporation must then decide whether to take such action.¹⁰ Thus, in response to Deal’s demand, Tugalo created a Demand Review Committee (“DRC”), which decided to not move forward

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¹ *Deal v. Tugalo Gas Co.*, No. 19-14336, 2021 WL 1049813 (11th Cir. Mar. 19, 2021).

² *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

³ *Deal*, 2021 WL 1049813, at *1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Deal*, 2021 WL 1049813, at *1–2.

¹⁰ *Id.* at *2.

with the shareholder derivative action because it was not in the company's best interest.¹¹

Following Tugalo's decision to not move forward with the suit, Deal filed a seventeen-count complaint in the U.S. District Court for the Northern District of Georgia.¹² The complaint contained both direct and derivative claims as well as requests for equitable relief.¹³ Pursuant to section 14-2-744(a) of the Georgia Code,¹⁴ Tugalo formed a special committee, which he called a "Litigation Review Committee" ("LRC"), to determine whether the corporation should move to dismiss.¹⁵ After conducting its review, the LRC recommended Tugalo move to dismiss Deal's derivative claims, which Tugalo elected to do.¹⁶ The district court handled Deal's seventeen claims at both the motion-to-dismiss stage and at summary judgment.¹⁷ At the motion-to-dismiss stage, the district court held that almost half of the claims could only be brought derivatively, rather than directly, and therefore dismissed them because the LRC complied with section 14-2-744(a) of the Georgia Code by conducting a reasonable and good faith investigation and concluding the derivative action was not in Tugalo's best interest.¹⁸ At summary judgment, the district court ruled in Tugalo's favor for the remaining claims while abstaining from adjudicating the equitable claims under the *Burjora* doctrine.¹⁹ In addition, at both stages the district court denied Deal's request for additional discovery before a judgment was made.²⁰ Deal then challenged almost every ruling that went against him.²¹

On appeal, the Eleventh Circuit first reviewed three issues arising out of the motion-to-dismiss stage: (1) Deal's derivative claims, (2) Deal's direct claims, and (3) Deal's de facto distributions claim.²² Starting with the derivative claims, Deal contended that the district court erred in dismissing these claims because the LRC was not independent and failed to undertake a reasonable, good-faith investigation.²³ Under Georgia law, a member of an LRC must be both disinterested—having "no personal interest in the challenged transaction"—and independent—having no personal relationship

¹¹ *Id.* at *1.

¹² *Id.*

¹³ *Id.*

¹⁴ GA. CODE ANN. § 14-2-744(a).

¹⁵ *Deal*, 2021 WL 1049813, at *2.

¹⁶ *Id.* at *1.

¹⁷ *Id.*

¹⁸ *Id.* at *1–2.

¹⁹ *Id.* at *1.

²⁰ *Id.*

²¹ *Deal*, 2021 WL 1049813, at *2.

²² *Id.* at *2–9.

²³ *Id.* at *2–3.

with the defendants that will cause him to show favor.²⁴ Deal argued that the LRC was not independent because it “relied too heavily on the previously formed DRC’s report” and because Carlton Jones, a member of both the DRC and LRC, served on the DRC with another defendant in the case, Bruce Stancil.²⁵ The Eleventh Circuit held that the LRC was independent because Jones did not have a financial stake in the outcome and could not be considered “interested” simply because he drafted the previous DRC report and may have formed a personal relationship with Stancil.²⁶

On the reasonableness and good faith challenge, Deal contended the LRC did not conduct a sufficiently thorough review because it did not interview enough people or review enough documents.²⁷ The Eleventh Circuit held that the LRC’s investigation was both reasonable and conducted in good faith because the LRC went through the entire complaint and addressed every allegation of misconduct made by Deal.²⁸ In addition, while the LRC’s report was only five pages, it also found several other red flags within the company and recommended action to address them.²⁹ Therefore, while Deal did point to some evidence of misconduct, the Eleventh Circuit’s job was simply to determine whether the LRC’s process was proper, not to evaluate its decision.³⁰ Thus, in relation to his derivative claims, Deal failed to show that the LRC either was not independent or did not undertake a reasonable, good-faith investigation.³¹

Next, the Eleventh Circuit addressed Deal’s argument that the district court erred in ruling his direct claims could only be pursued derivatively.³² The district court held that Deal failed to show he suffered any injury that was separate and distinct from that of the corporation or its shareholders.³³ Deal presented several arguments on appeal that the Eleventh Circuit found misguided.³⁴ First, Deal contended that whether a shareholder-plaintiff can sue directly “runs not to the claim’s merits but, instead, to the plaintiff’s standing to sue under Article III” and, therefore, Tugalo had to move to dismiss under Rule 12(b)(1) rather than Rule 12(b)(6).³⁵ The Eleventh Circuit simply stated that Deal was “incorrect” because, while the term “standing” is

²⁴ *Id.* at *3 (citing *Benfield v. Wells*, 749 S.E.2d 384, 387 (Ga. Ct. App. 2013)).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Deal*, 2021 WL 1049813, at *4.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at *5.

³³ *Deal*, 2021 WL 1049813, at *5.

³⁴ *Id.* at *5–6.

³⁵ *Id.* at *5.

used to decide whether a shareholder can bring a direct claim, it is done so in a “corporate-law sense” rather than under Article III.³⁶ Deal’s second argument was that he suffered a “special injury” because the other shareholder-defendants received special payments that Deal would have otherwise received through dividends.³⁷ However, the Eleventh Circuit rejected this argument as well because Deal was unable to show that any such payments existed, and “[n]on-existent payments can’t constitute a special injury.”³⁸ Lastly, Deal claimed his direct action should have been maintained because Georgia law provides an exception where a shareholder does not have to bring his action derivatively if “the circumstances show that the reasons for the general rule requiring a derivative suit do not apply.”³⁹ In relevant part, the reason for the “general rule” is “to protect the interest of all the shareholders by ensuring that the recovery goes to the corporation, rather than allowing recovery by one or a few shareholders to the prejudice of others”⁴⁰ However, the Eleventh Circuit held that this reason did apply here because three other shareholders were injured by the alleged payments and their interests needed to be protected as well.⁴¹ Therefore, because Deal did not solely fall within the exception, the court affirmed the district court’s holding that Deal’s claims could not be pursued directly.⁴²

The last issue on appeal arising from the motion-to-dismiss stage was Deal’s claim that Tugalo and its directors made improper payments to company insiders and that these payments amounted to “de facto distributions.”⁴³ Under section 14-2-832(a) of the Georgia Code, a director who votes for an unlawful distribution is liable to the corporation.⁴⁴ The district court dismissed this claim because Deal was unable to show that Tugalo’s board approved or assented to the alleged distributions.⁴⁵ The Eleventh Circuit affirmed the district court’s dismissal because, even on appeal, Deal was unable to specify which distributions the defendants approved or which he took issue with.⁴⁶ Thus, in summary, the Eleventh

³⁶ *Id.* (citing *Franchise Tax Bd. of Cal. v. Alcan Aluminium Ltd.*, 493 U.S. 331, 336 (1990)).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Deal*, 2021 WL 1049813, at *6 (quoting *Patel v. 2602 Deerfield, LLC*, 819 S.E.2d 527, 532 (Ga. Ct. App. 2018)).

⁴⁰ *Id.* (quoting *Patel*, 819 S.E.2d at 532–33).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* (citing GA. CODE ANN. § 14-2-832(a)).

⁴⁵ *Deal*, 2021 WL 1049813, at *6.

⁴⁶ *Id.*

Circuit affirmed all decisions made by the district court at the motion-to-dismiss stage.⁴⁷

The Eleventh Circuit then turned to three issues arising out of the district court's summary judgment order: the district court's (1) rejection of Deal's fraud claim, (2) denial of Deal's motion to amend his complaint, and (3) extension of the *Burford* doctrine.⁴⁸ Starting with Deal's fraud claim, the district court granted summary judgment in favor of Tugalo because Deal failed to show "that he justifiably relied on any of Tugalo's alleged misstatements."⁴⁹ In addition, the district court denied Deal's motion to defer ruling because any evidence to support Deal's claim would have already been in his possession.⁵⁰ On appeal, Deal contended that the district court incorrectly "relieved" Tugalo of its Rule 56⁵¹ burden to "demonstrate the absence of a genuine issue of material fact."⁵² However, the Eleventh Circuit stated that Tugalo undoubtedly met its Rule 56 burden by pointing to "an absence of evidence to support [Deal's] case"—evidence, that is, that shows Deal justifiably relied on any alleged misrepresentations.⁵³ Deal then argued that the district court "ignored his testimony"; however, as the Eleventh Circuit noted, rather than ignoring Deal's testimony, the district court specifically held that his testimony did not support the conclusion that he justifiably relied on any alleged misstatements.⁵⁴ Therefore, the Eleventh Circuit affirmed the district court's grant of summary judgment relating to Deal's fraud claim as well as the motion to defer ruling because Deal failed to specify which documents he hoped to find in discovery.⁵⁵

Next, in a straightforward decision, the Eleventh Circuit reviewed the district court's denial of Deal's motion to amend his complaint five months after the district court's deadline for amending pleadings.⁵⁶ Deal sought to add a new wrongful-distribution claim to his complaint based on findings in the DRC and LRC reports.⁵⁷ In affirming the district court's decision, the Eleventh Circuit held that the district court did not abuse its discretion when it denied Deal's motion because Deal had access to these reports three months before the amendment deadline.⁵⁸

⁴⁷ *Id.*

⁴⁸ *Id.* at *7–9.

⁴⁹ *Id.* at *7.

⁵⁰ *Id.*

⁵¹ FED. R. CIV. P. 56(a).

⁵² *Deal*, 2021 WL 1049813, at *7.

⁵³ *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

⁵⁴ *Id.* at *8.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Deal*, 2021 WL 1049813, at *8.

Lastly, the Eleventh Circuit addressed the issue of whether it was proper for the district court to abstain from adjudicating Deal’s three equitable claims—judicial dissolution, accounting, and appointment of an auditor—under *Burford*.⁵⁹ Under the *Burford* abstention doctrine, a federal court can elect to abstain from adjudicating a case that is otherwise properly within its jurisdiction, but only in a “narrow” set of circumstances.⁶⁰ The Supreme Court, as well as the Eleventh Circuit, has defined this narrow set of circumstances as arising only when exercising jurisdiction “would interfere with an ongoing state administrative proceeding or action.”⁶¹ Here, as the Eleventh Circuit noted, there was no state administrative proceeding to dissolve Tugalo Gas Company.⁶² Rather, all that was before the court was a legal question of “whether a federal court has the authority to dissolve a state-chartered corporation.”⁶³ In the view of the Eleventh Circuit, a “thorny” legal question is not a compelling justification for the extension of the *Burford* doctrine to judicial-dissolution claims.⁶⁴ Therefore, instead of abstaining, the district court should have simply decided this issue as it was before them.⁶⁵ As such, the Eleventh Circuit reversed the district court’s decision to abstain from adjudicating Deal’s judicial-dissolution claim under *Burford* and remanded that claim and the other two equitable claims for consideration by the district court.⁶⁶

In *Deal*, the Eleventh Circuit reiterated its interpretation of the *Burford* doctrine to only apply in a narrow set of circumstances—those dealing with a state policy proceeding or action. Going forward, district courts are now aware that judicial dissolution claims, as well as other equitable claims, will not be covered under *Burford* and must be adjudicated as they come before the court.

⁵⁹ *Id.*

⁶⁰ *Id.* (citing *Siegel v. LePore*, 234 F.3d 1163, 1173 (11th Cir. 2000); *Burford v. Sun Oil Co.*, 319 U.S. 315, 332–34 (1943)).

⁶¹ *Id.* (citing *Siegel*, 234 F.3d at 1173).

⁶² *Id.* at *9.

⁶³ *Id.*

⁶⁴ *Deal*, 2021 WL 1049813, at *9.

⁶⁵ *Id.*

⁶⁶ *Id.*