

Insights: Delaware Alert

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Delaware Supreme Court Holds That Automatic Forfeiture Provision Does Not Invalidate Contract With Restrictive Covenants

On February 3, 2026, an *en banc* Delaware Supreme Court issued an order reversing the Court of Chancery's holding that the exercise of an automatic forfeiture provision in an equity agreement rendered that agreement — including its restrictive covenants — unenforceable due to lack of consideration. This ruling confirms that an equity agreement will not be rendered unenforceable under Delaware law simply because the company enforces an automatic forfeiture provision.

In *North American Fire Ultimate Holdings, LP v. Doorly*, the Court of Chancery originally dismissed a complaint brought by the plaintiff company. In doing so, the court agreed with defendant that the company's exercise of an automatic forfeiture provision, after defendant's termination for cause, rendered the contract without consideration because the now-forfeited equity units were the only consideration provided by the company under the agreement.

On appeal, the Delaware Supreme Court held that "consideration is measured at the time of contracting and not at the time of enforcement," and noted that there was no dispute about the consideration underlying the agreement at the time of contracting, even though the value of the units underlying the agreement was "somewhat contingent" at the time of contracting. The Supreme Court remanded the action back to the Court of Chancery for further proceedings.

The case is: *North American Fire Ultimate Holdings, LP v. Doorly*, No. 142, 2025 (Del.).

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