

Pitts, Mazzone and Peebles in Texas Lawbook: U.S. Fifth Circuit Rules in Favor of Advisor in \$4M M&A Fee Dispute

February 27, 2024 Ryan Pitts, Michael Mazzone, Julia Peebles

PRACTICES Litigation, Appellate, Mergers and Acquisitions

Haynes Boone Associate [Ryan Pitts](#), with the assistance of Partner [Michael Mazzone](#) and Associate [Julia Peebles](#), successfully represented Catalyst Strategic Advisors, L.L.C. in a \$4 million M&A fee dispute against Three Diamond Capital SBC, and the win was covered in *Texas Lawbook*.

Read an excerpt below:

In 2021, when Houston-based Contractors Building Supply Company sold itself to Herc Rentals for \$190 million, they decided against paying a \$4 million “advisory completion fee” to the company they had originally employed to help them.

Business obligations don’t work that way, especially when they are spelled out in a contract, the U.S. Court Appeals for the Fifth Circuit explained to CBS in a 13-page opinion released Thursday.

A three-judge panel ordered that Denver-based Catalyst Strategic Advisors be paid its commission — exactly as a Houston federal judge had already decided — remanding the case back to the trial court solely to determine the issue of attorney’s fees.

CBS maintained to the court that a “non-exclusive” clause in the contract, which allowed Catalyst to take on other clients, also allowed CBS to negotiate on their own — without an advisor and without having to pay Catalyst the otherwise contractually required closing fee. Moreover, CBS argued that paying the fee would amount to an unearned “windfall” obviated by the \$150,000 already paid Catalyst in the form of their quarterly fees.

As for the “windfall” issue, the court said there was none. CBS signed the contract. Catalyst did the work and did “a great job” in doing so. The 18-month tail period was no surprise to either party. And the resulting \$3,839,693 fee was reasonably proportional to the \$190.3 million deal.

“Contracts between sophisticated parties do not become less binding or inequitable simply because they involve the negotiated payment of large sums. When a court enforces the terms of such a contract, as here, it promotes certainty and fairness, not windfalls.”

To read the full article in *Texas Lawbook*, click [here](#).