2026 Tex. Bus. 70

The Business Court of Texas,
First Division

GARY GUILLAUME, derivatively and on behalf of COINBASE GLOBAL, INC., *Plaintiff,*	§	
v.	§	
BRIAN ARMSTRONG, *et al.*, *Defendants*,	§	Cause No. 26-BC01A-0052
and	§	
COINBASE GLOBAL, INC., a Texas Corporation, *Nominal Defendant*.	§	

Opinion and Order of Dismissal

¶1 Before the Court is *Defendants' Rule 91 Special Exception to Derivative Action Petition* and Plaintiff's opposition thereto. At the core of Defendants' objection is Plaintiff's failure to satisfy pre-suit demand obligations with respect to Coinbase Global, Inc. (a Texas corporation previously incorporated in Delaware) before filing this shareholder derivative action. In their briefs, the parties primarily argue about the adequacy (or lack

thereof) of Plaintiff's pleading of demand futility under Delaware law. Concluding that Texas law applies, the Court holds that Defendants' special exceptions are SUSTAINED and the Court DISMISSES the action.

I. Pre-Suit Demand Obligations Under Texas Law and Delaware Law

¶2 Texas law and Delaware law differ on the requirements a shareholder must meet to bring a derivative action. Texas law requires a shareholder of a Texas corporation to file a pre-suit demand before commencing a derivative action on behalf of the corporation.[1] TEX. BUS. ORGS. CODE § 21.553. By statute, "A shareholder may not institute a derivative proceeding until the 91st day after the date a written demand is filed with the corporation stating with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the corporation take suitable action." *Id.* at § 21.553(a). An exception is carved out for closely-held corporations. *Id.* at § 21.563.

¶3 The corporation's rejection of the demand or irreparable injury to the corporation (either at present or before expiration of the 90 days) provides

[1] To assert a claim for a foreign corporation, a shareholder must abide "by the laws of the jurisdiction of formation of the foreign corporation." TEX. BUS. ORGS. CODE § 21.562.

grounds for terminating the 90-day waiting period. *Id.* § 21.553(b). Failure to make a demand is never excused. *Sneed v. Webre*, 465 S.W.3d 169, 184 (Tex. 2015). When a shareholder initiates a derivative proceeding without making a pre-suit demand, the appropriate remedy is dismissal. *See In re Schmitz*, 285 S.W.3d 451, 459 (Tex. 2009) (orig. proceeding) (noting that pre-suit requirement is a substantive requirement, not a procedural one).

¶4 Delaware law, in contrast, requires a shareholder of a Delaware corporation to *either* make a pre-suit demand *or* plead demand futility before commencing a derivative action on behalf of the corporation. *United Food & Commercial Workers Union v. Zuckerberg*, 262 A.3d 1034, 1047-48 (Del. 2021); *see also* DEL. CH. CT. R. 23.1. Pleading demand futility requires particularized allegations as to each individual director and establishing that a demand would have been futile for at least half of the governing board's members. *Zuckerberg*, 262 A.3d at 1059.

¶5 Three questions determine whether a demand would have been futile:

> (i) whether the director received a material personal benefit from the alleged misconduct that is the subject of the litigation demand; (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and (iii) whether the director lacks

> independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

Id. "If the answer to any of these questions is 'yes' for at least half of the members of the demand board," failure to make a demand is excused. *Id.*; *see also* DEL. CH. CT. R. 23.1 (implementing demand requirement).

II. Summary of the Parties' Dispute

¶6 The parties agree on the relevant facts. First, Coinbase is a Texas corporation, having reincorporated in this state from Delaware in December 2025. Second, Plaintiff commenced the instant action in the 68th Judicial District Court, Dallas County, Texas, on April 16, 2026. *See generally* Pl.'s Pet. Third, in his pleadings, Plaintiff contends Defendants' wrongdoing occurred between April 14, 2021, and June 5, 2023—while Coinbase was incorporated in Delaware. *Id.* at ¶ 2. And fourth, no pre-suit demand was made on Coinbase's board before Plaintiff commenced this action; instead, Plaintiff attempted to plead demand futility under Delaware law. *Id.* at ¶¶ 240-263.

¶7 In their Special Exceptions, Defendants invoke Texas law and note, "Under Texas law, Plaintiff's Petition would be dismissed as a matter of course because he failed to make . . . a pre-suit demand on Coinbase's board."

Mtn. at p. 1. Defendants nevertheless devoted the remainder of the brief to arguing why Plaintiff's petition failed to satisfy the high bar for pleading demand futility under Delaware law. *See generally id.* at pp. 6-18.

¶8 Plaintiff responds that "Texas law does not govern demand futility or inhibit Plaintiff's ability to bring the derivative claims." Resp. at p. 10. Plaintiff argues that Plaintiff's claims arose prior to Coinbase's reincorporation and that Coinbase represented in a regulatory filing that reincorporation would not "'extinguish or adversely affect the standing or ability' of any shareholder to bring a derivative action based on acts occurring" before the effective date of the conversion. *Id.* at p. 11; *see also* Pl.'s Pet. at ¶ 241. Thus, Plaintiff asserted that Coinbase should be "treated as a Delaware corporation." Resp. at p. 11; *see also* Pl.'s Pet. at ¶ 242. Plaintiff further disputed the inadequacy of his pleadings to establish demand futility under Delaware law. Resp. at pp. 12-25.

III. The Internal Affairs Doctrine

¶9 Because Texas and Delaware law stand in conflict, the Court must first determine which state's law applies. "Texas courts apply the internal affairs doctrine as a conflict of laws principle." *Grynberg v. Grynberg*, 535 S.W.3d 229, 233 (Tex. App.—Dallas 2017, no pet.) (also stating that internal

affairs doctrine is not jurisdictional). The internal affairs doctrine provides that the formation and internal affairs of a Texas corporation are governed substantively by the laws of Texas (*see* TEX. BUS. ORGS. CODE §§ 1.101, 21.002), while the formation and internal affairs of a foreign corporation are governed substantively by the laws of the state or jurisdiction where the foreign corporation is incorporated (*id.* at § 21.562).[2] The importance of choice of law in the circumstances before the Court cannot be overstated: Plaintiff's suit must be dismissed if Texas law governs, but not if Delaware law governs.[3]

¶10 In this case, Plaintiff contends that his claims are subject to Delaware law because they arose while Coinbase was incorporated in Delaware. This Court does not reach a contrary conclusion and assumes—without deciding—that Plaintiff is correct. However, Defendants' special exceptions do not raise a choice-of-law question concerning the merits of the

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[2] Texas courts apply Texas procedure regardless of the applicable substantive law. *In re Mahindra, USA Inc.*, 549 S.W.3d 541, 547 (Tex. 2018) (orig. proceeding).

[3] Even if Delaware law governed and the Court sustained Defendants' special exceptions regarding the adequacy of Plaintiff's demand futility allegations, Texas courts have historically permitted a plaintiff to replead. *See, e.g.*, *In re Brick*, 351 S.W.3d 601, 607–08 (Tex. App.—Dallas 2011, orig. proceeding); *In re Crown Castle Int'l Corp.*, 247 S.W.3d 349, 354–55 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding).

pleaded claims. Instead, Defendants' special exceptions present a choice-of-law question concerning Plaintiff's standing to assert those claims for Coinbase. Accordingly, the Court's analysis extends beyond a simple adoption of Delaware law to the asserted claims. Standing warrants independent inquiry—and the Court finds that the internal affairs doctrine resolves that inquiry.

¶11 "Standing is a component of subject-matter jurisdiction that focuses on the question of who may bring an action." *Moody v. Nat'l W. Life Ins. Co.*, 634 S.W.3d 256, 272 (Tex. App.—Houston [1st Dist.] 2021, no pet.). Standing is thus essential to the Court's authority to adjudicate this case. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993); *Webre v. Sneed*, 358 S.W.3d 322, 328 (Tex. App.—Houston [1st Dist.] 2011), *aff'd*, 465 S.W.3d 169, 193 (Tex. 2015). A court has no authority to adjudicate a suit brought by a party lacking standing. *Moody*, 634 S.W.3d at 272. Standing cannot be waived. *Tex. Ass'n of Bus.*, 852 S.W.2d at 445. Subject-matter jurisdiction, and thus standing, is a question of law. *Moody*, 634 S.W.3d at 273.

¶12 Further, standing is assessed at the time suit is filed. *See M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 711 (Tex. 2001); *John C. Flood*

of DC, Inc. v. Supermedia, L.L.C, 408 S.W.3d 645, 650 (Tex. App.—Dallas 2013, pet. denied); *Hydroscience Techs., Inc. v. Hydroscience, Inc.*, 401 S.W.3d 783, 789 (Tex. App.—Dallas 2013, pet. denied, reh'g denied). The primary inquiry is "whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed.*" *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (emphasis added).

¶13 In Texas, standing to bring a derivative proceeding is conferred by statute. *See* TEX. BUS. ORGS. CODE § 21.552. Subject to certain other limitations, standing generally requires the plaintiff to have been "a shareholder of the corporation at the time of the act or omission complained of" or to have become "a shareholder by operation of law originating from a person that was a shareholder at the time of the act or omission complained of," and that the plaintiff possess the ability to "fairly and adequately represent[] the interests of the corporation in enforcing the right of the corporation." *Id.* The Texas Business Organizations Code also makes clear that a shareholder cannot assert derivative claims if a sufficient pre-suit demand has not been made. *See generally Schmitz*, 285 S.W.3d 451.

¶14 Of note, the requirement of a rejected demand or a pleading of demand futility is substantive and constitutes a component of standing under

Delaware law. *See*, *e.g.*, *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773, 801–02 (Del. 2023); *Drachman v. Cukier*, No. 2019-0728, 2021 WL 5045265, at *6 (Del. Ch. Oct. 29, 2021). It is less clear whether pre-suit demand is a component of standing under Texas law. Texas' "Standing to Bring Proceeding" requirement and the "Demand" requirement are found in separate sections of the Code. *See* TEX. BUS. ORGS. CODE §§ 21.552, 21.553. However, the internal affairs doctrine supports only one conclusion regarding governing law as to the pre-suit demand requirement, regardless of whether it is considered a component of standing (and therefore jurisdictional) or not. Accordingly, the Court need not resolve that question today.

¶15 At least two courts in Texas have discussed choice of law in the context of standing to bring a derivative shareholder suit. *See Neff v. Brady*, 527 S.W.3d 511 (Tex. App.—Houston [1st Dist.] 2017, no pet.); *In re Skyport Glob. Commc'ns, Inc.*, No. 08-36737, 2011 WL 111427 (S.D. Tex. Jan. 13, 2011). In *Neff*, the parties disagreed over the application of the laws of Switzerland or application of the laws of Bermuda to the issue of standing. *Neff*, 527 S.W.3d at 523. In that case, the appellate court declined to "undertake a conflict-of-law analysis" because "the outcome of the standing issue [was] the same under either the laws of Bermuda or those of

Switzerland"—no true conflict of law existed. *Id.* In *Skyport*, a bankruptcy court determined Delaware law applied to the standing issue because "the law of the state of incorporation at the time a cause of action arises governs derivative claims." *Skyport*, 2011 WL 111427, at *25. However, the bankruptcy court engaged in no analysis as to why the law governing the merits of the underlying claim would also apply to standing. This Court does not find *Skyport* persuasive.

¶16 In a derivative suit, the right of action belongs to the corporation. *Grinnell v. Munson*, 137 S.W.3d 706, 718 (Tex. App.—San Antonio 2004, no pet.). The plaintiff in such an action "steps into the shoes of [a] corporation and usurps the board of directors' authority to decide whether to pursue the corporation's claims." *In re Crown Castle Int'l Corp.*, 247 S.W.3d 349, 355 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). Thus, to assert the corporation's rights, the shareholder must maintain his relationship to the corporation throughout the litigation. *In re UMTH Gen. Servs., L.P.*, 725 S.W.3d 424, 429 (Tex. 2025) (orig. proceeding). So, while a claim may accrue to a corporation, its shareholders acquire no vested right—at the time of accrual—to assert that claim later in a derivative suit. Thus, there is no logical reason to conclude that the law applicable to the corporation at the time of

claim accrual applies to a shareholder's later act of filing suit, purportedly on the corporation's behalf.

¶17 The internal affairs doctrine, as a general principle, subjects various acts and omissions to review according to the law of the state of incorporation *as of the date they (do or do not) occur*. Consequently, whether an officer or director had authority to engage in a particular act will be adjudicated according to the law of the state of incorporation at the time the officer or director engaged in that act. By that same reasoning, a shareholder's authority to engage in a particular act—namely, the institution of a suit to assert rights belonging to the corporation—presents an indistinguishable circumstance, which this Court finds should be governed by the law of the state of incorporation at the time the shareholder engages in that act. Put another way, under the internal affairs doctrine, a shareholder's authority to assert derivative claims should be governed by the law of the state of incorporation as of the date the shareholder purports to exercise that authority. After all, a board majority's decision to institute an identical suit on behalf of the corporation would be governed by the same.

¶18 The Court therefore holds that a shareholder's standing and ability to bring a derivative suit on behalf of a Texas corporation is governed

by Texas law, even if the asserted claims arise under—and are subject to—the laws of another state. The benefits of this bright-line rule are clarity and certainty, particularly where shareholders may assert claims arising at different points in time (perhaps before and after a reincorporation), putting the laws of more than one state at issue.

IV. Plaintiff's Evidence in Support of Delaware Law

¶19 In opposition to the application of Texas law, Plaintiff relies on exhibits evidencing representations by Coinbase to regulatory bodies and shareholders concerning the legal effects of its reincorporation. Of the statements relied upon by Plaintiff, the most pertinent is a statement in a regulatory filing that the reincorporation would not "extinguish or adversely affect the standing or ability of any such person or entity to initiate such a derivative action or suit on behalf of the Delaware Corporation regarding acts, omissions or transactions occurring" before the effective date of the conversion. Resp. Appx. (Ex. 1 Coinbase's Form 14C Info. Stmt.) at p. 71; *see also id.* at pp. 10, 67.

¶20 First, the Court notes that Plaintiff's exhibits do not—either expressly or impliedly—state that Delaware law will continue to govern any person's standing or ability to bring a derivative suit. To the contrary, the

exhibits expressly provide that Texas law will govern the corporation's affairs following the reincorporation. Accordingly, Plaintiff's reading of the language is overly broad. In its regulatory filings, Coinbase purportedly committed itself to refrain from extinguishing or adversely affecting the standing or ability of a shareholder to initiate a derivative action for acts or omissions occurring prior to its reincorporation. It did not purport to have the laws of another state govern the corporation after its reincorporation in Texas.

¶21 Second, taking this language at face value, Plaintiff offers no argument or evidence as to how the loss of the option to plead demand futility in lieu of making a pre-suit demand (the chief difference between Delaware and Texas law as relevant to the issues raised in this case) presented an adverse effect on Plaintiff's standing or ability to bring suit. Plaintiff did not argue that making a pre-suit demand would be impossible, irreparably harmful to Plaintiff or to the corporation, or even prejudicial, or that the option of pleading demand futility provided Plaintiff any particular advantage or benefit. The record is devoid of any adverse effect on Plaintiff as a result of the change in Coinbase's governing law from Delaware to Texas. Plaintiff's suggestion that application of Texas law would be *inherently* adverse to shareholder derivative standing is conclusory and unavailing.

¶22 Third, even if Coinbase's representation could be read as broadly as Plaintiff suggests, Plaintiff offers no argument that Texas law would allow a party to contract around Texas' pre-suit demand requirement, nor does Plaintiff present evidence that Coinbase successfully did so. There is no such carve-out in the bylaws filed with the Court. And by statute, a pre-suit demand is required, without exception. *Sneed*, 465 S.W.3d at 184 ("Unlike Texas law for a century before, the new provision requires presuit demand in all cases; a shareholder can no longer avoid a demand by proving it would have been futile." (quoting *Schmitz*, 285 S.W.3d at 455)). Further, to the extent (if any) that pre-suit demand is a component of standing, it cannot be waived. *Tex. Ass'n of Bus.*, 852 S.W.2d at 445.

V. Conclusion

¶23 Having determined that Texas law governs the issue of Plaintiff's standing and authority to assert a derivative action on behalf of Coinbase, and that Defendants' special exception asserting the same should be sustained, the Court next considers the appropriate relief in this case. By statute, a shareholder cannot assert derivative claims if a sufficient pre-suit demand has not been made. *See generally Schmitz*, 285 S.W.3d 451. Here, it is undisputed that Plaintiff made no pre-suit demand. Consequently, under Texas law,

Plaintiff cannot prosecute his derivative suit on behalf of the Texas corporation and this action must be dismissed.

¶24 IT IS THEREFORE ORDERED that Defendants' Special Exceptions are SUSTAINED as to the application of Texas law, and the instant action is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Andrea K. Bouressa

ANDREA K. BOURESSA
Judge of the Texas Business Court,
First Division

SIGNED ON: October 2, 2026.