

How Del. High Court's Moelis Reversal Fits Into DExit Debate

By **Douglas Rappaport, Stephanie Lindemuth and Kate Shapiro** (February 26, 2026)

In a unanimous en banc decision on Jan. 20, the Delaware Supreme Court reversed the Delaware Court of Chancery's February 2024 ruling invalidating significant governance provisions of Moelis & Co.'s stockholder agreement, which required the founder's consent before the company's board took various actions.

The Supreme Court concluded in *Moelis & Co. v. West Palm Beach Firefighters Pension Fund* that the contested provisions were not inherently void, but rather voidable, and determined that the stockholder's challenge — initiated nearly nine years later — was barred under the equitable doctrine of laches.

The Supreme Court rejected the Court of Chancery's conclusion that alleged conflicts with Section 141(a) of the Delaware General Corporation Law, which protects a board of directors' discretionary function, rendered the provisions void and immune from equitable defenses. Instead, the Supreme Court explained that the proper inquiry is whether the corporation could have lawfully achieved substantially similar governance arrangements through another authorized mechanism.

Because Moelis could have implemented comparable controls through its certificate of incorporation, and because the agreement was executed and fully disclosed in 2014, the Supreme Court held that the plaintiff's facial challenge accrued at that time and was barred by laches.

By expressly declining to decide the facial validity of the provisions, the Supreme Court highlighted broader implications for Delaware's corporate law framework and the ongoing debate surrounding Delaware's desirability for incorporation.

Case History and Background

This case arose out of a stockholder agreement executed by Moelis & Co. in April 2014, which granted Kenneth Moelis, through his control of Moelis & Co. Partner Holdings LP, the rights to approve board actions, including the ability to elect all members of the board.

At the time of the initial public offering, Partner Holdings held Class B shares carrying supervoting rights that effectively gave Kenneth Moelis, the company's founder and CEO, voting control. The governance framework — including the existence and terms of the stockholder agreement — was disclosed in the IPO prospectus and repeated in subsequent public filings.

In March 2023, the West Palm Beach Firefighters' Pension Fund — an owner of Class A shares since 2014 — initiated legal action in the Court of Chancery. The fund requested a declaratory judgment, arguing that certain sections of the stockholder agreement were



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inherently invalid because they restricted the board's authority granted by Section 141(a) of the DGCL.

Section 141(a) provides that the "business and affairs" of a Delaware corporation are "managed by or under the direction of [its] board of directors, except as may be otherwise provided in [the DGCL] or in [the corporation's] certificate of incorporation." The provision is a foundational allocation of managerial authority and has long been understood to limit contractual arrangements that impermissibly constrain the board's exercise of its statutory discretion.

On Feb. 23, 2024, the Court of Chancery agreed, holding that the challenged provisions violated Section 141(a), constituted an ongoing statutory violation, and were void and unenforceable.

The Court of Chancery applied a test that if a provision in a stockholder agreement creates an "internal governance arrangement," courts should look at whether that arrangement has "the effect of removing from directors in a very substantial way their duty to use their own best judgment on management matters" or "tends to limit in a substantial way the freedom of director decisions on matters of management policy."

Several provisions in the Moelis agreement did not pass this test, including that the board must obtain the founder's consent before taking certain board actions and recommend that stockholders vote in favor of the founder's preferred board nominees.

The Court of Chancery awarded the plaintiff \$6 million in attorney fees in July 2024.

The Delaware Supreme Court's Decision

Challenged Stockholder Provisions Found Voidable, Not Void

The Supreme Court began by emphasizing Delaware precedent distinguishing void acts from voidable acts. As the Supreme Court explained, void acts are beyond a corporation's power and immune from equitable defenses, whereas voidable acts can be challenged but fall within corporate power and thus are subject to equitable defenses such as laches.

Rejecting the Court of Chancery's framework, the Supreme Court held that the correct inquiry is not whether the specific method used by the Moelis board to implement the challenged provisions was improper under the DGCL, but whether the corporation could lawfully accomplish substantially the same governance arrangements through another authorized mechanism, such as charter provisions or preferred-stock designations.

Because the plaintiffs did not identify any Delaware law preventing the adoption of the challenged provisions through other methods, the plaintiffs did not meet their burden of showing that the governance provisions are void. The Supreme Court concluded that the challenged provisions were not beyond the corporation's authority and therefore were voidable rather than void, and as a result, equitable defenses — including laches — were available.

No "Continuing Wrong"

Turning to timeliness, the Supreme Court held that the only alleged wrongful act was the execution of the stockholder agreement in 2014. The Supreme Court squarely rejected the Court of Chancery's conclusion that the agreement's continuing effects constituted an

ongoing statutory violation.

The Supreme Court explained that later consequences of a discrete act do not restart the limitations clock. Because the agreement was executed and fully disclosed at the time of the IPO, and complete relief was available at that time, the plaintiff's claim accrued in 2014.

A facial challenge first brought nearly nine years later was therefore untimely and barred by laches.

Merits Not Reached

Because the challenge was time-barred, the Supreme Court did not address whether the provisions violated Section 141(a) of the DGCL as applied or on the merits.

The Supreme Court also vacated the \$6 million attorney fee award, which depended on the now-reversed Court of Chancery ruling.

Legislative Context

The Supreme Court noted, but did not apply, amendments to the DGCL signed into law by then-Gov. John Carney on July 17, 2024 — legislation widely viewed as a response to the Court of Chancery's Moelis decision.

Those amendments added the new DGCL Section 122(18), which expressly authorizes corporations — notwithstanding Section 141(a) — to enter into contracts with stockholders that restrict corporate action, require stockholder or other approvals, or otherwise allocate governance rights, so long as such provisions would be permissible if included in the certificate of incorporation and do not violate other mandatory provisions of Delaware law.

The amendments are not retroactive and therefore did not play a role in the Supreme Court's analysis.

The opinion acknowledged the DGCL's policy commitment to private ordering within statutory bounds, describing the DGCL as a "broad enabling act which leaves latitude for substantial private ordering, provided the statutory parameters and judicially imposed principles of fiduciary duty are honored," quoting the Delaware Supreme Court's 1996 decision in *Williams v. Geier*.

Implications

The Court of Chancery's decision was seen as emboldening stockholders seeking to challenge stockholder agreements that grant investors special governance rights, but the Supreme Court's reversal will tamp down this enthusiasm. The decision sends a clear signal that stockholders seeking to invalidate governance arrangements on a facial basis must act promptly, and disclosure at the time of adoption is likely to start the clock.

Void governance provisions will remain a narrow category. By grounding the analysis in corporate power rather than procedural choice, the Supreme Court limited the circumstances in which governance provisions will be deemed void and immune from equitable defenses.

As-applied challenges remain available to future stockholders. The Supreme Court emphasized that its decision does not foreclose "as-applied claims against ... companies or

its fiduciaries, based on specific circumstances that may arise in the future," even if "the period for bringing facial challenges has expired."

This decision reflects recent trends in Delaware court rulings and ongoing debates about corporations reincorporating elsewhere, known as DExit. Critics argued that Vice Chancellor J. Travis Laster's 2024 decision in *Moelis* encouraged out-of-state incorporation by restricting corporate governance.

In response, the Delaware Legislature expedited amendments to Section 141(a) of the DGCL to protect stockholder agreements.

The Supreme Court's reversal of the *Moelis* decision on procedural grounds, without addressing the new amendments or the substantive validity of the agreement, balances Delaware's pro-incorporation stance with the ongoing debate over its corporate law.

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