

In re BGC Partners, Inc. Derivative Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: C.A. No. 2018-0722-AGB
CASE LEADERS: Jeroen van Kwawegen, Christopher J. Orrico
CASE TEAM: Andrew Blumberg, Rebecca L. Reyhani

This stockholder derivative action challenges related-party transactions proposed and structured by BGC Partners, Inc.'s ("BGC" or the "Company") controlling stockholders, alleging that they intended to extract nearly \$1 billion in cash from BGC while saddling the Company with massive debt to third-party lenders.

On February 12, 2019, through their counsel, BLB&G and Grant & Eisenhofer, P.A., Plaintiffs Roofers Local 149 Pension Fund and Northern California Pipe Trades Trust Funds filed a Verified Amended Stockholder Derivative Complaint (the "Complaint"), derivatively on behalf of BGC against (i) members of BGC's board of directors; (ii) BGC's controlling stockholders, Howard Lutnick ("Lutnick"), Cantor Fitzgerald, L.P. ("Cantor"), and CF Group Management, Inc. ; and (iii) BGC's CEO Lutnick (in his capacity as an officer), for breaches of fiduciary duty.

The Complaint challenges BGC's 2017 acquisition of Berkeley Point Financial LLC ("Berkeley Point") and alleges that the unfair deal was forced on BGC investors to benefit Lutnick and approved through an unfair process by non-independent directors and resulted in unfair payments by BGC to Cantor affiliates. As a result, Lutnick, who held a substantially larger economic stake in Cantor Fitzgerald than BGC, benefitted personally from BGC's overpayment for Berkeley Point, at the expense of the Company and its public stockholders.

Specifically, in the challenged transaction, Lutnick and Cantor caused BGC to take on \$975 million in debt to: (i) purchase Berkeley Point Financial LLC ("Berkeley Point") from Cantor Commercial Real Estate Company, L.P. ("CCRE"), a Cantor affiliate, for the overinflated price of \$875 million (the "Berkeley Point Acquisition") and (ii) commit to invest \$100 million for a 27% interest in CCRE's remaining commercial mortgage-backed securities business (the "Joint Venture" and, together with the Berkeley Point Acquisition, the "Related Party Transaction"). Since the Related Party Transaction presented an inherent conflict of interest for Lutnick and Cantor, BGC created a special committee consisting of BGC's remaining four directors (the "Special Committee"). However, the "independent" members of the Special Committee were anything but. Each member of the Special Committee was dominated and controlled by Lutnick and Cantor as exhibited by: (i) their deep, extensive relationships with Lutnick; (ii) the material income derived from serving on various Lutnick/Cantor related boards of directors; and (iii) their knowing abdication of their fiduciary duties in connection with the Related Party Transaction. As a result, Lutnick and Cantor were able to pocket millions of dollars through the challenged transactions at the expense of the Company and its stockholders.

Defendants filed motions to dismiss the Complaint and, on June 6, 2019, the Delaware Court of Chancery heard arguments on Defendants' motions. On September 30, 2019, the Court denied Defendants' motions. (Click on "Case Documents" at left to view the Court's Opinion.)

BLBG continues to vigorously prosecute this action. The matter is now in the discovery phase of litigation with depositions commencing in July 2020 and a trial scheduled for August 2021.

Case Documents

- September 30, 2019 - Memorandum Opinion Denying Defendants' Motion to Dismiss