

Landry's Restaurants, Inc. Shareholder Litigation

COURT: Delaware Court of Chancery

CASE NUMBER: C.A. No. 4339-VCL

CASE LEADERS: Jeroen van Kwawegen

This is a derivative and shareholder class action arising from the conduct of Landry's Restaurants, Inc.'s ("Landry's" or "the Company") chairman, CEO and largest shareholder, Tilman J. Fertitta ("Fertitta"). Fertitta and Landry's board of directors (the "Board") breached their fiduciary duties by stripping Landry's public shareholders of their controlling interest in the Company for no premium and severely devalued Landry's remaining public shares.

In June 2008 Fertitta agreed to pay \$21 per share to Landry's public shareholders to acquire the approximately 61% of the Company's shares that he did not already own (the "Buyout"). Fertitta planned to finance the Buyout by obtaining funds from a number of lending banks.

In September 2008 before the Buyout closed, Hurricane Ike struck Texas and damaged certain of the Company's restaurants and properties. Fertitta used this natural disaster, and the general state of the national economy, to leverage renegotiation of the Buyout. By threatening the Board that the lending banks might invoke the material adverse effect clause of the Buyout's debt commitment letter – even though no such right existed – Fertitta drastically reduced his purchase price to \$13.50 a share in an amended agreement announced on October 18, 2008 (the "Amended Transaction").

In the wake of this announcement, Landry's share price plummeted, and Fertitta took advantage of Landry's depressed stock price by accumulating shares on the open market. Despite the Board's recognition of Fertitta's stock accumulation outside the terms of the Amended Transaction, it did nothing to protect the interests of Landry's minority shareholders. By December 2, 2008, Fertitta owned more than 50% of the Company, and sought to escape his obligations under the amended agreement.

Roughly one month later, Fertitta and the lending banks used a routine request of the Company to cause the Board to terminate the Amended Transaction, thereby allowing Fertitta to avoid paying a termination fee.

On February 5, 2009, BLB&G filed a lawsuit in the Chancery Court of Delaware for Plaintiff Louisiana Municipal Police Employees' Retirement System and other public shareholders, and derivatively on behalf of Landry's, against Fertitta and the Board seeking to enforce the Buyout and various other reliefs. On April 2, 2009, Defendants filed their Motion to Dismiss the Complaint and Motion to Stay Discovery.

On July 28, 2009, the Court denied Defendants' motion to dismiss on all grounds. On November 3, 2009, Landry's announced that its Board approved a new deal with Fertitta, whereby Fertitta would acquire the approximately 45% of Landry's outstanding stock that he does not already own for \$14.75 per share in cash (the "Proposed Transaction"). On November 12, 2009, the Court granted Plaintiff's motion to supplement its original complaint to add additional claims involving breaches of fiduciary duty by Fertitta and the Landry's Board related to the Proposed Transaction.

The parties are currently engaged in discovery proceedings. On December 2, 2009, after the deposition of the Special Committee's former legal counsel, Plaintiff filed a motion to compel, or alternatively, to preclude the Special Committee from asserting reliance upon legal advice with respect to Fertitta's attempt to take Landry's private in

2008. On January 11, 2010, the Court held a hearing concerning the Plaintiff's motion, and found that the Special Committee improperly asserted its privilege over matters that did not involve legal advice at its former counsel's deposition. As a consequence of the Special Committee's abuse of its attorney-client privilege, the Court ordered that Plaintiff be allowed to re-depose Jack Capers, the Special Committee's former counsel, with a Delaware lawyer defending such deposition, and awarded Plaintiff its costs and fees in connection with Mr. Capers' deposition.

On March 22, 2010, Plaintiff filed a motion to compel the production of the vast majority of the purportedly privileged documents on Fertitta's privilege log. Defendants then agreed to produce the vast majority of the challenged documents prior to a Court hearing scheduled on March 29, 2010. On May 23, 2010, the parties reached a partial settlement, which resolved Plaintiff's claims related to the 2009 Buyout.

On May 28, 2010, Defendants moved to dismiss Plaintiff's Second Amended Complaint. On June 2, 2010, Plaintiff filed its unredacted public version of its Second Amended Complaint. On June 18, 2010, Plaintiff filed its opposition to Defendants' motions to dismiss.

On June 22, 2010, following negotiations, the parties entered into a **Stipulation of Partial Settlement** memorializing the terms of the partial settlement reached on May 23, 2010 (the "June 2010 Settlement Stipulation"). The June 2010 Settlement Stipulation resolves Plaintiff's claims related to the 2009 Buyout and settles and releases certain claims that were asserted and/or could have been asserted against Defendants in connection with Counts IV through VIII of the Second Amended Complaint (the "2009 Deal Settlement"). On June 22, 2010, the parties submitted the 2009 Deal Settlement to the Court, which resulted in the Court entering a scheduling order on June 28, 2010 that preliminarily approved the 2009 Deal Settlement and directed that notice of the 2009 Deal Settlement be provided to all persons and entities who held shares of Landry's common stock at any time between and including November 3, 2009 and the closing of a sale/merger transaction to Fertitta or a third party (the "2009 Transaction Subclass").

On July 7, 2010, the parties conducted a full-day mediation session with retired United States District Judge Nicholas H. Politan, which resulted in the parties reaching an agreement in principle to settle the remaining claims asserted against Defendants in the Second Amended Complaint. The parties memorialized the principal terms of the settlement in a Term Sheet executed on July 14, 2010. On July 23, 2010, the parties entered into the **Stipulation of Settlement of Remaining Claims** that memorialized the terms of the July 14, 2010 Term Sheet (the "July 2010 Settlement Stipulation"). The July 2010 Settlement Stipulation resolves Plaintiff's claims related to the 2008 Buyout and settles and releases the claims asserted against Defendants in Counts I, II, III and IX of the Complaint in exchange for a settlement payment of \$14.5 million in cash (the "2008 Class Settlement"). On July 23, 2010, the parties submitted the 2008 Class Settlement to the Court, which resulted in the Court entering a **Scheduling Order** on July 26, 2010 that preliminarily approved the 2008 Class Settlement and directed that notice of the 2008 Class Settlement be provided to all persons and entities who held shares of Landry's common stock at any time between and including September 17, 2008 and January 11, 2009 (the "2008 Transaction Subclass"). At the request of the parties, the July 26, 2010 Scheduling Order also amended the June 28, 2010 scheduling order to allow notice of the 2009 Deal Settlement to be combined with notice of the 2008 Deal Settlement.

On September 17, 2010, Plaintiff filed its Motion for Final Approval of Proposed Settlements, Plan of Allocation, and Requested Award of Attorneys' Fees and Reimbursement of Expenses. On October 7, 2010, the Court approved the Proposed Settlements. The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- October 7, 2010 - Settlement Hearing Transcript
- September 17, 2010 - Affidavit of Jose C. Fraga RE: Mailing of Notice of Proposed Settlements and the Proof of Claim
- September 17, 2010 - Affidavit of R. Randall Roche in Support of Settlement and Requested Award of Attorneys' Fees
- September 17, 2010 - Exhibits to H-J Thomas Declaration
- September 17, 2010 - Exhibits C-G to Thomas Declaration
- September 17, 2010 - Exhibits A-B to Thomas Declaration
- September 17, 2010 - Declaration of Mary S. Thomas in Support of Class Plaintiff's Motion for Final Approval of Proposed Settlements, Plan of Allocation, and Requested Award of Attorneys' Fees and Reimbursement of Expenses
- September 17, 2010 - Joint Declaration of Mary S. Thomas and Mark Lebovitch in Support of Plaintiff's Motion for Final Approval of the Proposed Settlements, Plan of Allocation, and Requested Award of Attorneys' Fees and Reimbursement of Expenses
- September 17, 2010 - Brief in Support of Class Plaintiff's Motion for Final Approval of Settlements, Plan of Allocation, and Requested Award of Attorneys' Fees and Reimbursement of Expenses
- September 17, 2010 - Class Plaintiffs' Motion for Final Approval of the Proposed Settlements, Plan of Allocation, and Requested Award of Attorneys' Fees and Reimbursement of Expenses
- September 17, 2010 - Proposed Order and Final Judgment with Respect to Dismissal and Settlement of Counts IV through VIII of the Complaint
- September 17, 2010 - Proposed Order and Final Judgment with Respect to Dismissal and Settlement of Counts I, II, III and IX of the Complaint
- September 17, 2010 - Proposed Order Granting Attorneys' Fees and Expenses
- July 23, 2010 - Addendum to Stipulation of Partial Settlement
- Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses
- July 26, 2010 - Scheduling Order
- July 23, 2010 - Stipulation of Settlement of Remaining Claims
- June 22, 2010 - Stipulation of Partial Settlement
- May 28, 2010 - Motion to Dismiss of Director Defendants
- May 28, 2010 - The Fertitta Defendants' Brief in Support of their Motion to Dismiss
- June 18, 2010 - Plaintiff's Memorandum of Law in Opposition to Defendants' Motions to Dismiss

- June 2, 2010 - Unredacted Second Amended Complaint (Public Version)
- May 23, 2010 - Letter to Vice Chancellor Laster from Stuart Grant
- March 29, 2010 - Memorandum of Law in Support of Plaintiffs' Motion to Compel the Fertitta Defendants, Richard Liem and Steven L. Scheinthal to Produce Documents
- March 29, 2010 - Declaration of John C. Kairis in Support of Plaintiffs' Motion to Compel the Fertitta Defendants, Richard Liem and Steven L. Scheinthal to Produce Documents
- January 11, 2010 - Transcript from Court Hearing
- January 11, 2010 - Transcript from Court Hearing
- December 10, 2009 - Memorandum of Law in Support of Plaintiff's Motion to Compel or Preclude the Special Committee's Reliance Upon Legal Advice
- November 24, 2009 - Letter to Vice Chancellor Laster
- November 13, 2009 - Supplement to the Verified Class Action Complaint
- November 10, 2009 - The Supplement to the Original Complaint
- June 2, 2009 - Defendants' Reply Brief in Support of Their Motions to Dismiss and Stay Discovery
- May 15, 2009 - Plaintiff's Opposition to Defendants' Motion to Dismiss and Stay Discovery
- April 2, 2009 - Defendants' Opening Brief in Support of Their Motions to Dismiss and Stay Discovery
- July 28, 2009 - Memorandum Opinion and Order Denying Defendants' Motion to Dismiss
- February 5, 2009 - Verified Class Action and Derivative Complaint