

Minneapolis Fighters' Relief Association v. Amore, et al.

COURT: Delaware Court of Chancery
CASE NUMBER: 6175-VCN
CASE LEADERS: Mark Lebovitch

On January 27, 2011, Terremark Worldwide, Inc., ("Terremark" or the "Company"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Verizon Communications Inc. ("Verizon"), whereby Verizon would buy all of the outstanding shares of Terremark for \$19.00 per share (the "Proposed Transaction"). After initial investigation, BLB&G recognized that the Terremark board of directors ("the Board"), led by the Company's chairman, founder and chief executive Manuel Medina, had abandoned its fiduciary duties to maximize value for its shareholders in a change of control transaction.

Rather than seek the highest price available for Terremark's shares, the Board embraced Medina's plan to sell the Company to his preferred bidder, Verizon, who had assured Medina an executive position running Terremark as a subsidiary of the telecommunications giant. The Board did not contact a single other bidder during the sales process, and allowed Medina free reign to negotiate a transaction of his choosing. The result was a series of draconian deal protections in the Merger Agreement that dissuaded potential competing bids and virtually assured consummation of the Proposed Transaction.

On February 7, 2011, BLB&G filed suit in the Delaware Court of Chancery on behalf of Minneapolis Firefighters' Relief Association to challenge the Proposed Transaction and the terms of the Merger Agreement. The Chancery Court agreed to hear the case on an expedited basis, and extensive fact discovery and preparation for a hearing to enjoin the Proposed Transaction occurred.

On February 28, 2011, the Defendants agreed to settle the litigation with an amendment of the Merger Agreement, which included:

- (i) The elimination of the Company's so-called "force-the-vote" covenant contained in Section 5.4(c) of the Merger Agreement;
- (ii) The reduction of the Termination Fee payable to Verizon from \$52,500,000 to \$40,000,000; and
- (iii) The elimination of Verizon's right to exercise the Top-Up Option contained in Section 1.4 of the Merger Agreement.

Terremark also agreed to make certain additional disclosures regarding the background of the events leading to the signing of the Merger Agreement and with respect to certain of the analyses undertaken by the Company's financial advisor in connection with such financial advisor's assessment of the fairness of the Proposed Transaction to the Company's stockholders. On July 25, 2011, the Court approved the settlement.

Case Documents

- Final Order and Judgment

- Notice of Pendency and Proposed Settlement of Shareholder Litigation
- Scheduling Order
- Amendment No.1 to Agreement and Plan of Merger
- Additional Disclosures Concerning the Tender Offer
- Stipulation and Agreement of Compromise and Settlement