BLB&G Bernstein Litowitz Berger & Grossmann LLP

In re Ancestry.com Inc. Shareholder Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: Consol. C.A. No. 7988-CS
JUDGE: Leo E. Strine
CASE CONTACTS: Mark Lebovitch, Jeroen van Kwawegen

On October 26, 2012, BLBG filed a class action complaint (the "Complaint") in the Delaware Court of Chancery on behalf of the Pontiac General Employees Retirement System and similarly situated shareholders of Ancestry.com ("Ancestry" or the "Company") challenging the proposed sale of the Company to an investor group including Permira Advisers ("Permira"), Spectrum Equity Investors ("Spectrum"), and Timothy Sullivan ("Sullivan"), Ancestry's CEO (the "Merger"). Among other things, the Complaint alleged that the Ancestry board of directors (the "Board") breached their fiduciary duties in connection with the Merger, and Permira aided and abetted the Board's breaches.

In early 2012, private equity bidders started to inquire about Ancestry's availability for a takeover. The Board retained boutique investment bank, Qatalyst Partners ("Qatalyst"), to serve as its financial advisor in connection with a potential sale of the Company. Qatalyst contacted all of the most likely bidders for Ancestry to see if they were interested in participating in the sales process. As a condition to receiving diligence materials, Qatalyst required the Company's suitors to execute non-disclosure agreements ("NDAs"). The NDAs contained broad standstill provisions that prevented counterparties from buying or offering to buy Ancestry securities for a period of 12-18 months and a provision that prevented counterparties from ever asking for a waiver of the standstill (the "Don't Ask, Don't Waive Standstills").

Several parties submitted indications of interest for Ancestry, but the process was slanted in favor of one bidder – Permira. Permira was the only suitor to unequivocally state from the very beginning that it wanted Ancestry senior management and the Company's controlling shareholder, Spectrum, to be part of the buyout group. This gave Permira preferred status throughout the process. Among other things, (a) Qatalyst tipped Permira on the specific price range that the private equity firm would need to offer to advance to the next round of bidding and (b) Ancestry allowed Permira to partner with another bidder when others who specifically asked to be allowed to partner were categorically denied permission to do so.

Having indicated a range of $34-$37.50 to get into the "final round," Permira began to drop its bid because it lacked the ability to fund the deal. Permira's first formal offer was $31 per share. This offer was finally raised to $32 and agreed to by the very same management and controlling shareholder who were participating on the buy side of the deal. However, Qatalyst could not give a fairness opinion at $32, and so told the Ancestry Board. Sullivan, Spectrum and Qatalyst created a new set of much more conservative projections that could be used in the fairness opinion to justify a sale of the Company at $32 per share. While Ancestry was using these new numbers to justify the Permira deal, CEO Sullivan was using much more bullish projections to value his personal Ancestry equity stake that would be rolled over in the transaction.

On October 21, 2012, without going back to Company's other bidders (several of whose initial offers were above the final deal price) for a "last look", the Board formally approved the sale of the Company to Permira for $32 per share.

As a result of the Don't Ask, Don't Waive Standstills and the "no-shop" provision in the Merger Agreement, the Merger was completely insulated from post-signing competition. The parties most likely to have an interest in submitting a topping bid for Ancestry were contractually prohibited from doing so because of the Don't Ask, Don't Waive Standstills and neither Ancestry nor its representatives could reach out to these suitors to see if they were interested in submitting a topping bid because this would have been a breach of the "no-shop."

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On November 7, 2012, the Court appointed BLB&G as Co-Lead Counsel.

On December 7, 2012, BLB&G filed its brief in support of Plaintiffs' motion for a preliminary injunction (the "Opening PI Brief").

On December 11, 2012, as a direct result of Plaintiffs' Complaint and Opening PI Brief, Ancestry's general counsel sent a letter to each of the NDA counterparties affirmatively waiving the Don't Ask, Don't Waive Standstills, thus permitting those parties to request a waiver of the standstill in order to make a superior proposal for the Company.

On December 13, 2012, Defendants filed their briefs in opposition to Plaintiffs' motion for a preliminary injunction.

On December 15, 2012, BLB&G filed its reply brief in support of Plaintiffs' motion for a preliminary injunction.

On December 17, 2012, the Court conducted a hearing on Plaintiffs' motion for a preliminary injunction. At the end of the hearing, Chancellor Strine issued a bench ruling in which he enjoined the Merger until Ancestry publicly disclosed, among other things, that (a) its banker was unwilling to provide a fairness opinion on a $32 deal based on the Company's financial projections, (b) management prepared significantly more conservative projections to allow Qatalyst provide a fairness opinion, and (c) until December 11, the NDA counterparties were completely precluded from submitting a superior proposal as a result of the Don't Ask, Don't Waive Standstills.

On December 19, 2012, Ancestry filed a Form 8-K with the U.S. Securities and Exchange Commission which contained the disclosures required by Chancellor Strine.

The Ancestry shareholder vote on the Merger was scheduled for December 27, 2012.

BLB&G continues to aggressively prosecute this Action on behalf of Ancestry shareholders.

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