



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE JOHN Q. HAMMONS HOTELS INC.)
SHAREHOLDER LITIGATION) CONSOLIDATED
) C.A. No. 758-CC
)

PLAINTIFFS’ MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs, by their attorneys, hereby move the Court for entry of an Order, in the form attached hereto, compelling the defendants other than John Q. Hammons (“Defendants”) to produce relevant documents responsive to Plaintiffs’ Second Request for the Production of Documents Directed to All Defendants Other than John Q. Hammons (“Second Document Request”).

As grounds therefor, Plaintiffs represent as follows:

1. This is a class action arising out of the going-private squeeze-out merger of the minority public shareholders (the “Merger”) of John Q. Hammons Hotels, Inc. (“JQH Inc.” or the “Company”), a Delaware corporation whose sole asset was an interest in John Q. Hammons Hotels, LP (“JQH LP”). JQH LP owns and manages hotel properties. The Merger closed in September 2005.

2. On January 2, 2009, the Court held a case management conference at the request of the parties and directed, among other things, that fact discovery be completed by March 13, 2009.

Post-Merger Financial Data

3. On January 12, 2009, Plaintiffs served their Second Document Request (annexed hereto as Exhibit A). Request No. 1 sought company-wide and hotel property-

level quarterly and annual financial reports for JQH LP for the period October 1, 2005 through December 31, 2007 (i.e., for two years and one quarter following the closing of the Merger) (the “Relevant Period”). Request No. 2 sought documentation sufficient to show purchase and sale transactions for the Relevant Period with a value of \$5 million or greater.

4. Through the requests described above (the “Post-Merger Financial Data Requests”), Plaintiffs sought to obtain financial information for the Relevant Period that would allow direct comparability with the pre-Merger period by adjusting for any acquisitions or dispositions during such period.

5. Defendants served their Responses to Plaintiffs’ Second Document Request on February 11, 2009 (annexed hereto as Exhibit B). Therein, Defendants objected to the Post-Merger Financial Data Requests and offered to produce only year-end financial statements, reporting results on a company-wide level only, for the period ended December 31, 2006 (i.e., one year and one quarter after the Merger).

6. On February 17, 2009, counsel held a telephonic meet-and-confer session, during which they disagreed as to the relevance of post-Merger financial information to Plaintiffs claims. Subsequently, Defendants forwarded Plaintiffs an email (annexed hereto as Exhibit C), also asserting that the Second Request for Documents was untimely.

7. This Court has previously recognized that post-merger financial information is discoverable, “even in appraisal cases,” and all the more in breach of fiduciary duty actions “which may, ultimately, justify a rescissory damages remedy,” *In re Best Lock Corp. S’holder Litig.*, 2000 WL 1876460 (Del. Ch.) at *6. In so ruling, the

Court observed that for evidence to be discoverable, it “need only be reasonably calculated to lead to admissible evidence.” *Id.* at *4. As this Court has also noted, under Chancery Court Rule 26(b)(1), “relevance limitations are viewed as broad and flexible guidelines to be approached liberally.” *MacLane Gas Co. v. Enserch Corp.*, 1990 WL 96247 (Del. Ch.) at *3 (internal quotation marks omitted).

8. Post-merger financial data is particularly relevant where the defendants’ valuation is made “with consideration of factors which will likely occur post-merger.” *Gonsalves v. Straight Arrow Publishers, Inc.*, 701 A.2d 357, 362 (Del. 1997); *accord Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485, 499 n.91 (Del. 2000) (“post-merger evidence is admissible to show that plans in effect at the time of the merger have borne fruition” (internal quotation marks omitted)).

9. Here, post-Merger financial information is of particular relevance because the financial advisor to the special committee that reviewed the Merger, Lehman Brothers, Inc. (“Lehman”), deeply discounted the value of JQH Inc. compared to its peers, based on its prediction that JQH Inc. would underperform peer companies in the post-Merger period – despite the fact that JQH Inc. consistently outperformed them in the years leading up to the Merger.

10. With respect to the duration of the relevant post-merger period, that Relevant Period is comparable to, or shorter than, the periods for which documents were directed to be produced in similar cases. *See In re Best Lock S’holder Litig.*, 2000 WL 1876460, at *5-*6 (directing production of documents for a post-merger period of two and one-half years); *Gower v. Beldock*, 1998 WL 200267 (Del. Ch.) at *3 (directing

production of documents for a post-merger period of twenty-seven months); *Ross v. Proco Mgmt., Inc.*, 1983 WL 17991 (Del. Ch.) at *2 (directing production of documents for a post-merger period of nearly two years); *Kaye v. Pantone, Inc.*, 1983 WL 18012 (Del. Ch.) at *1 (directing production of documents for a post-merger period of three years).

11. With respect to the issue of burden, Plaintiffs respectfully submit that the materials requested – between three and eleven computer spreadsheet files generated within the past three years, together with a compilation of major transactions during the Relevant Period – do not constitute a meaningful burden. (Plaintiffs request production of the spreadsheets in native format, further reducing the production burden on Defendants.)

12. Finally, there is simply no basis for Defendants' claim that Plaintiffs' request is untimely. The Court did not impose any such limitation on the January 2 conference call, nor was any limitation included in the scheduling order that was subsequently entered (annexed hereto as Exhibit D).

13. Accordingly, Plaintiffs respectfully request that the Court order production of documents as specified in Requests Nos. 1 and 2 of the Second Document Request.

Valuation Opinions

14. By Request No. 3 of the Second Document Request, Plaintiffs also sought valuation opinions during the period January 1, 2005 through December 31, 2007. Defendants have objected, with respect to the Relevant Period, on the grounds of relevance and burden. In *Best Lock*, the Court directed production of documents

concerning third parties' post-merger interest in acquiring the subject companies or substantial assets thereof, based on substantially the same analysis discussed above in paragraph 7. 2000 WL 1876460 at *4. Plaintiffs respectfully submit that post-Merger valuation opinions should be treated substantially the same, and request that the Court order production of documents as specified in Request No. 3 of the Second Document Request.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order in the form annexed hereto.

Dated: March 9, 2009

ROSENTHAL MONHAIT & GODDESS,
P.A.

OF COUNSEL:

LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
(212) 907-0700
(212) 818-0477 fax

THE BRUALDI LAW FIRM, PC
29 Broadway, Suite #1515
New York, New York 10006
(212) 952-0602
(212) 952-0608 fax

/s/ Norman M. Monhait
Norman M. Monhait (#1040)
919 Market Street, Suite 1401
Citizens Bank Center
P.O. Box 1070
Wilmington, Delaware 19899-1070
(302) 656-4433
(302) 658-7567 fax

Attorneys for Plaintiffs