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Morton's Investor Says $117M Fertitta Deal Doesn't Cut It

By Lance Duroni

Law360, Wilmington (December 20, 2011, 9:32 PM ET) -- A Morton's Restaurant Group Inc. shareholder launched a class action Monday in Delaware challenging restaurant magnate Tilman Fertitta's $117 million bid for the steakhouse chain, claiming the deal shortchanges investors.

Fertitta, the owner of Houston-based restaurant and hospitality giant Landry's Restaurants Inc., announced Friday that Morton's board had agreed to the $6.90-per-share deal, which boasts a 34 percent premium.

But Morton's shareholder Lon Myers calls the price "grossly unfair and inadequate" in a complaint filed in Delaware court, claiming Morton's board members breached their fiduciary duty to shareholders by signing off on the deal.

The offer neglects to factor in synergies created through the merger and the company's generally rosy financial prospects, according to the suit.

"[W]hile Fertitta will benefit from cost savings and synergies in the proposed transaction, the Morton's shareholders are left without adequate consideration," Myers said.

To support his claim that the deal undervalues Morton's, the plaintiff cites revenue increases at the company of 5 to 10 percent for each quarter of 2011 over the same quarters in 2010, along with one independent Wall Street analysis that suggested a $9-per-share price target for Morton's.

"The proposed transaction is wrongful, unfair and harmful to Morton's public shareholders because they will not be able to share equitably in the true value of the company," Myers said.

The suit also takes issue with various provisions in the merger agreement that allegedly discourage competing offers and set the deal in stone, including a so-called "top-up" option allowing Fertitta dodge a shareholder vote on the deal by purchasing shares to reach the 90 percent threshold necessary to complete the merger.

Private equity fund Castle Harlan Partners III LP, which owns roughly 28 percent of the Morton's outstanding shares, has entered into an agreement to tender its shares into the offer and vote in favor of the merger. The fund's CEO John Castle is also a Morton's director and a defendant in the suit.

The plaintiff is seeking an injunction barring the deal, along with unspecified damages.

The complaint comes on the heels of a settlement last week in a similar class action in the same court over Fertitta's proposed purchase of McCormick & Schmick's Seafood Restaurant. McCormick agreed to disclose additional information on the deal to shareholders in return for the claims being dropped, according to court documents.

Chicago-based Morton's owns 77 restaurants throughout the U.S. and one in China. Fertitta's acquisition of the chain is expected to close in February.

Myers is represented by James P. McEvilly and Juan E. Monteverde of Faruqi & Faruqi LLP.

Counsel information for the defendants was not immediately available.

The case is Lon Myers v. Morton's Restaurant Group Inc. et al., case number 7122, in the Delaware Court of Chancery.

--Additional reporting by Sindhu Sundar. Editing by Elizabeth Bowen.