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# Investors Tell Del. Justices Tech Co. Low-Balled Appraisal

By **Jeff Montgomery**

Law360 (January 13, 2021, 5:22 PM EST) -- An attorney for investors in outsourcing company SourceHOV Holdings urged Delaware's justices on Wednesday to uphold a $47.3 million post-merger share appraisal 2.8 times higher than the company's, saying the business "ran from its own expert" while pressing indefensibly low values.

At issue in the appeal hearing was a decision by Vice Chancellor Joseph R. Slights III in January 2020 that pegged the company's pre-deal share price at $4,591, far above the company's $1,633 claim and 63% higher than a $2,817 per-share value developed by an outside expert for SourceHOV using a different calculation approach.

In his decision, the vice chancellor branded the company's far lower assertions as "incredible" and largely sided with five investors who challenged payouts offered by the private equity-owned business after it completed a three-way, $2.8 billion deal in 2017 that formed a public company, Exela Technologies.

"They can't defend the calculations here. Credibility was a key point in this case." Samuel J. Lieberman of Sadis & Goldberg LLP, counsel for Manichaean Capital LLC and four other investors, said while arguing before the full five-member court.

"When you have a situation of a party backdating information, telling various different stores, when a vice chancellor looks at the record and sees a valuation consistent with the [company's own] financial adviser's, it's not an abuse of discretion" to adopt a different and higher share value, Lieberman said.

SourceHOV provided business service outsourcing and financial technology services across a range of industries at the time of the merger.

Although the Chancery Court set the value after a three-day trial in June 2019, the investors have remained unpaid and sued SourceHOV to enforce the decision in July 2020 in the U.S. District Court for the Southern District of New York. The suit — slated for a dismissal argument on Jan. 27 — argued that the original company was attempting to shield its assets through its new parent and make itself "judgment proof."

Meredith E. Kotler of Freshfields Bruckhaus Deringer US LLP, counsel to SourceHOV Holdings Inc., told the justices that the vice chancellor's opinion "repeatedly made findings about SourceHOV's precarious operative reality," but "committed legal error in ignoring that acknowledged operative reality" when doing a valuation analysis.

"When you have a case where both sides agree that market evidence isn't relevant and discounted cash flow analysis is important, it comes down essentially to a battle of the experts," Justice Karen L. Valihura told Kotler.

Vice Chancellor Slights "essentially found your side was not credible for a host of reasons, including your client disagreeing with its own expert. Why is it we shouldn't look at it as a deferential standard of review largely on the credibility finding of the vice chancellor?"

Kotler replied that there were "overarching legal errors" that were "separate from any other underlying factual issues," justifying an order vacating the vice chancellor's ruling and returning the case to the lower court with instructions to consider the "operative reality."

Lieberman argued that despite a SourceHOV expert's finding that the investors' holdings should be worth $2,817 per share, or about $29 million, SourceHOV pressed for a lower $1,633 per share, or about $16.8 million. Part of the company's argument, Lieberman said, relied on claims that the company was in dire straits, based in part on a document found to have been backdated by a year.

"The vice chancellor did not find they were drowning in debt," Lieberman said. "Ultimately, he made a sound credibility determination" based in part on a "respondent that had serious credibility issues."

The court valued the 10,304 shares held by the investors at $47.3 million and added $10.9 million for costs and prejudgment interest under a Delaware law allowing stockholders to seek court appraisal of shares rather than a deal price. Values for the additional year of post-judgment interest were not available, although Delaware law requires payment at 5% plus the federal discount rate, compounded quarterly.

Also rejected by the vice chancellor as too high during the 2019 trial was an initial investor argument that their shares were worth $5,079 apiece, a level that would have been worth $5 million more without taking interest accruals into account

SourceHOV Holdings Inc. is represented by T. Brad Davey, Matthew F. Davis, Andrew H. Sauder and Caneel Radinson-Blasucci of Potter Anderson & Corroon LLP and Meredith E. Kotler, Doru Gavril and Marques S. Tracy of Freshfields Bruckhaus Deringer US LLP.

Manichaean Capital LLC, et al., are represented by Rudolf Koch and Matthew W. Murphy of Richards Layton & Finger PA and Samuel J. Lieberman and Jesse M. Kantor of Sadis & Goldberg LLP.

The case is Source HOV Holdings Inc. v. Manichaean Capital LLC, case number 215, 2020, in the Supreme Court of the State of Delaware.

The case under appeal is Manichaean Capital LLC, et al., v. Source HOV Holdings Inc., case number 2017-0673, in the Court of Chancery of the State of Delaware.

--Editing by Emily Kokoll.