



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NEGOCIOS LIBERTAD LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2023-0621-PAF
)	
PAINÉ SCHWARTZ PARTNERS,)	PUBLIC VERSION FILED
LLC, ERIC BERINGAUSE, and)	JUNE 20, 2023
LUTZ GOEDDE,)	
)	
Defendants,)	
)	
and)	
)	
MVK FARMCO LLC,)	
)	
Nominal Defendant.)	

VERIFIED DERIVATIVE COMPLAINT

Plaintiff Negocios Libertad LLC brings this derivative Complaint on behalf of Nominal Defendant MVK FarmCo LLC against Defendants Paine Schwartz Partners, LLC, Eric Beringause, and Lutz Goedde, as follows:

INTRODUCTION

1. In September 2019, Paine Schwartz Partners, LLC (“Paine”) merged its portfolio company, Wawona Packing, with Gerawan Farming (the “Merger”). Gerawan Farming was the largest stone fruit producer in the United States; Wawona Packing was the second largest. The Merger valued the equity of the combined entity, MVK FarmCo LLC (the “Company”), at \$560 million.

2. In a press release announcing the closing of the Merger, Kevin Schwartz, Paine's CEO, described Paine's vision for the combined entity:

This merger represents a tremendous milestone and the type of growth opportunity that we can achieve by leveraging Paine's agribusiness sector expertise and close collaboration with two family-owned businesses. We look forward to this new chapter for two companies that have been incredibly successful on their own, and we believe they can achieve even greater success through this merger.

3. Paine voluntarily undertook fiduciary duties and made binding contractual commitments to achieve that vision. Paine breached those obligations.

4. Less than four years later, [REDACTED]

[REDACTED]

[REDACTED]

5. Paine, on the other hand, profited handsomely from its destructive mismanagement of the Company, [REDACTED]

[REDACTED]

6. Paine also used its control over the Company to enrich others, causing the Company to pay millions in consulting fees to other firms for work that Paine had agreed to perform. Paine continued to cause the Company to pay millions in fees to those advisors despite obvious signs that they were either performing poorly or doing nothing at all.

7. Paine controls the Company through its affiliate, Wawona Delaware Holdings LLC (“Holdings”), which owns approximately 75% of the Company’s outstanding Class A Common Units. Paine also controls the Company’s Board of Managers (the “Board”) through Holdings’ contractual right to appoint a majority of the members of the Board. As the controller of the Company, Paine owes fiduciary duties to the Company for the benefit of its Unitholders, including Plaintiff.

8. Paine also agreed to provide management services to the Company in a Services Agreement executed at the time of the Merger. In the Services Agreement, Paine agreed to “devote reasonable time and efforts to the performance of” management services, including “identifying and assembling a highly capable board of managers . . . with significant industry and operational knowledge,” providing “advisory and consulting services in relation to the selection, retention, and supervision of other advisors,” and providing “advisory and consulting services on executive management personnel decisions [and] executive recruitment.”

9. Paine breached its fiduciary and contractual obligations. Paine staffed the Company with Managers and officers who made disastrous business decisions. Through its appointees, Paine willfully operated the Company to benefit itself at the expense of the Unitholders. Despite controlling the Board, Paine repeatedly ignored the Company’s governing documents by acting unilaterally on the Company’s behalf and concealing material information from the independent members of the Board.

Paine also permitted McKinsey & Company, a consulting firm, to collect millions in fees from the Company despite McKinsey's failure to deliver promised reports and improvements to the Company's bottom line. Paine acted intentionally to benefit McKinsey because the two entities have a longstanding, troubling relationship—many Paine employees are former McKinsey employees, Paine believes that its brand benefits from its association with McKinsey, and McKinsey has co-invested in Paine's funds, including by agreeing to invest in Paine's new investment fund as a limited partner.

10. Paine also breached multiple provisions of the Services Agreement. Paine failed to cooperate with the Company's senior executives or devote reasonable time and efforts to the services it agreed to perform under the Services Agreement. Paine also breached the Services Agreement by causing the Company to reimburse Paine for additional services the Company never requested or agreed to and whose amounts were not reasonable.

11. Paine also breached the implied covenant of good faith and fair dealing that inheres in the Services Agreement. Paine pervasively exercised its discretion under the Services Agreement to benefit Paine at the expense of the Company. Paine failed to pursue the legitimate objectives of the Services Agreement in good faith by selecting and retaining executives and outside advisors for self-serving ends and by refusing to allow the Company to pursue financing that the Company's financial

advisor repeatedly warned was desperately needed in late 2021 and early 2022. Paine further breached the implied covenant of good faith and fair dealing by using its ostensible authority under the Services Agreement to circumvent the governance structure in the Company's constitutive documents. Instead of respecting that governance structure, Paine directed the Company's operations and strategy unilaterally, hiring and firing executives to benefit Paine's interests, isolating the independent members of the Board from critical decisions, and unilaterally causing the Board to approve Paine's improper actions, often retroactively.

12. Paine accomplished its disloyal objectives through its control of the Board and two loyalist CEOs that Paine unilaterally installed in 2020 and 2022: Defendant Eric Beringause and Mark Rodriguez. Beringause breached his fiduciary duties by failing to act on an informed basis to benefit the Company. Instead, Beringause acted with gross negligence and to benefit Paine and his former employer, Edgewood Consulting.

13. Paine aided and abetted Beringause's breaches of fiduciary duty by directing, participating in, and concealing the breaches.

14. Defendant Lutz Goedde, a McKinsey insider hired by Paine after the Merger, aided and abetted Paine's breach of fiduciary duty by signing an agreement that purported to create new obligations of the Company to McKinsey without authorization from the Company (and before Goedde even joined the Board).

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