

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER TAYLOR,

Plaintiff,

v.

BBQ HOLDINGS, INC., JEFFERY
CRIVELLO, CHARLES E. DAVIDSON,
PETER O. HAEG, RACHAEL MAGA, and
BRYAN L. WOLFF,

Defendants.

Civil Action No. _____

**COMPLAINT FOR VIOLATIONS
OF THE SECURITIES EXCHANGE
ACT OF 1934**

JURY TRIAL DEMAND

Plaintiff Christopher Taylor (“Plaintiff”) alleges the following upon information and belief, including investigation of counsel and review of publicly available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. Plaintiff brings this action against BBQ Holdings, Inc. (“BBQ Holdings” or the “Company”) and BBQ Holdings’ Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934, 15.U.S.C. §§ 78n(a), 78n(d)(4), 78n(e), 78t(a), and SEC Rule 14d-9, 17 C.F.R. § 240.14d-9, arising out of the Board’s attempt to sell the Company to MTY Food Group Inc. through its wholly owned subsidiary MTY Franchising USA, Inc. and its wholly owned subsidiary Grill Merger Sub, Inc. (collectively “MTY”).

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading solicitation statement (the “14D-9”) to be filed with the Securities and Exchange Commission (“SEC”) on August 24, 2022. The 14D-9 recommends that BBQ Holdings stockholders tender their shares in favor of a proposed transaction (the “Proposed Transaction”) whereby BBQ Holdings is acquired by MTY. The Proposed

Transaction was first disclosed on August 9, 2022, when BBQ Holdings and MTY announced that they had entered into a definitive merger agreement (the “Merger Agreement”) pursuant to which MTY will acquire all of the outstanding shares of common stock of BBQ Holdings for \$17.25 per share (the “Merger Consideration”). The deal is valued at approximately \$200 million and is expected to close by the fourth quarter of 2022.

3. The 14D-9 is materially incomplete and contains misleading representations and information in violation of Sections 14(e) and 20(a) of the Exchange Act. Specifically, the 14D-9 contains materially incomplete and misleading information concerning the financial projections prepared by BBQ Holdings management, the financial analyses conducted by Kroll, LLC, operating through its Duff & Phelps Opinion Practice (“Kroll”), BBQ Holdings’ financial advisor, potential conflicts of interest faced by Kroll and Company insiders, and the background of the Proposed Transaction.

4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction, including filing any amendment to the 14D-9, unless and until the material information discussed below is included in any such amendment or otherwise disseminated to BBQ Holdings’ stockholders. In the event the Proposed Transaction is consummated without the material omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the Defendants’ violations.

PARTIES

5. Plaintiff is, and has been at all relevant times, the owner of shares of common stock of BBQ Holdings.

6. Defendant BBQ Holdings is a corporation organized and existing under the laws of the State of Minnesota. The Company’s principal executive offices are located at 12701

Whitewater Drive, Suite 100, Minnetonka, Minnesota 55343. BBQ Holdings common stock trades on the Nasdaq Global Select Market under the ticker symbol “BBQ.”

7. Defendant Jeffery Crivello has been Chief Executive Officer and a director of the Company since 2017.

8. Defendant Charles E. Davidson has been a director of the Company since 2020.

9. Defendant Peter O. Haeg has been a director of the Company since 2017.

10. Defendant Rachael Maga has been a director of the Company since 2021.

11. Defendant Bryan L. Wolff has been a director of the Company since 2015.

12. Nonparty MTY Food Group Inc. is a corporation established under the laws of the Canada Business Corporations Act with its principal executive offices located at 8210 Transcanada Highway, Saint-Laurent, Quebec, H4S 1M5, Canada.

13. Nonparty MTY Franchising USA, Inc. is a Tennessee corporation and is a wholly owned subsidiary of MTY Food Group Inc.

14. Nonparty Grill Merger Sub, Inc. is a Minnesota corporation and is a wholly owned subsidiary of MTY Franchising USA.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(e) and 20(a) of the Exchange Act.

16. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under

traditional notions of fair play and substantial justice.

17. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because a significant amount of the conduct at issue took place and had an effect in this District.

FURTHER SUBSTANTIVE ALLEGATIONS

A. Background of the Company and the Proposed Transaction

18. BBQ Holdings is an international restaurant company engaged in the business of franchising, and operating casual and fast casual dining restaurants. As of August 9, 2022, BBQ Holdings had multiple brands with over 100 company-owned locations and over 200 franchised locations, including ghost kitchens operating out of the kitchen of another restaurant location or shared kitchen space.

19. On August 8, 2022, the Company entered into the Merger Agreement with MTY.

20. According to the press release issued on August 9, 2022 announcing the Proposed Transaction:

MTY Food Group Inc. to Acquire Bbq Holdings, Inc. for \$17.25 Per Share

Montreal, Aug. 09, 2022 (GLOBE NEWSWIRE) -- MONTREAL, August 9th, 2022 - MTY Food Group Inc. ("MTY" or the "Company") (TSX:MTY) and BBQ Holdings, Inc. ("BBQ Holdings") (NASDAQ:BBQ) today announced they have entered into a definitive merger agreement (the "Merger Agreement") under which MTY would acquire all of the issued and outstanding common shares of BBQ Holdings for cash consideration of US\$17.25 per BBQ Holdings share representing total transaction value of approximately US\$200 million (C\$257 million) (the "Transaction"), including BBQ Holdings' net debt. The terms and conditions of the Merger Agreement were unanimously approved by the Boards of Directors of both companies. The Transaction is subject to customary closing conditions including receipt of applicable regulatory approvals. Upon completion of the Transaction, BBQ Holdings will become a subsidiary of MTY and the shares of BBQ Holdings will be de-listed from NASDAQ.

BBQ Holdings is a franchisor and operator of casual and fast casual dining restaurants across 37 states in the U.S., Canada, and United Arab Emirates. Its flagship restaurant brands operate under the "Famous Dave's", "Village Inn",

“Barrio Queen”, and “Granite City”, banners. As of August 9, 2022, BBQ Holdings operates over 200 franchised and over 100 corporate-owned restaurants. For the 2022 fiscal year ending January 1, 2023, and as publicly disclosed by BBQ Holdings, the company is expected to generate twelve-month run-rate system sales and cash EBITDA between US\$685M to US\$725M and US\$25.5M and US\$27.5M, respectively.

MTY is a leading franchisor in the North American restaurant industry. As of May 31, 2022, its network had 6,660 locations in operation, 99% of which are franchised. The Company established its presence in the U.S. with the acquisition of Kahala Brands in July 2016 and has since continued to grow its footprint in the country through new restaurant openings and acquisitions. With this Transaction, MTY will add leading restaurant brands to its network which will reach a total of approximately 7,000 locations, including over 3,900 in the United States.

“This transaction represents another key acquisition for MTY as we further scale and enhance our existing U.S. portfolio through the addition of nine unique brands. The transaction combines highly complementary businesses, including BBQ Holdings’ exciting casual and fast casual brands. BBQ Holdings’ restaurants are well established within each of their respective markets with a strong network of franchise partners, well-run corporate owned locations, and a best-in-class management team. We are excited about the prospects of adding BBQ Holdings’ brands to the MTY family and we look forward to welcoming Jeff Crivello and his team and their franchise partners,” commented Eric Lefebvre, Chief Executive Officer of MTY.

Jeff Crivello, Chief Executive Officer of BBQ Holdings, commented “We are thrilled to partner with MTY and its talented team of restaurant operators. Over the past four years we have significantly grown revenue and our restaurant portfolio while building a world-class team of entrepreneurs. We look forward to continuing the execution of our three pillars of growth, which we believe align very closely with MTY’s vision. With more than 80 brands, MTY brings vast buying power and a team of industry leaders who will provide additional support to our franchise partners. As our founder Dave Anderson says, we strive to deliver famous experiences with our ‘yes is the answer, what’s the question’ hospitality.”

Transaction Highlights

- Adds well-established quality brands to MTY’s portfolio of restaurants
 - 9 new restaurant brands adding to MTY’s portfolio
 - System sales expected to exceed C\$4.8B in aggregate following the Transaction based on BBQ Holdings projected sales representing an increase of 23% compared to MTY’s current levels
- Further expands MTY’s geographic footprint in the United States
 - Broadens MTY’s U.S. footprint with over 3,900 locations in the country, representing an increase of 9% in locations

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