

Case Name: Edgewater Growth Partners, LP v. H.I.G. Capital, Inc.
Case Conclusion: April 2013
Caption: Delaware Court of Chancery, C.A. No. 3601-CS
Keywords: Sale Process; Foreclosure Sale; Economic Damages
Industry: ATM Servicing
Professionals: David G. Clarke, ASA, William Jeffers, CFA, and William P. McInerney, ASA

The plaintiff contested the foreclosure of an ATM servicing company, Pendum, Inc., in the Delaware Court of Chancery, claiming it was not commercially reasonable under the Uniform Commercial Code (UCC) as to the sale process and price, considering the plaintiff's expert's valuation and "real world" indications of value. In its suit, the plaintiff claimed the debt purchaser and its affiliate violated Article 9 of the UCC by staging a sale that was not commercially reasonable in terms of process and price. The defendants argued the plaintiff sued to avoid paying on the \$4 million guaranty.

To support its position that the foreclosure price bore no relation to the value of the company, the plaintiff retained a valuation expert who performed a discounted cash flow (DCF) analysis to establish the company's enterprise value. He also used the guideline public company method and the mergers and acquisitions method to derive valuation multiples for Pendum. The plaintiff's expert testified that on the date of sale, the company was worth \$110 million, significantly more than sale price.

David G. Clarke, ASA, a Managing Principal of the Griffing Group, submitted a rebuttal report and testified at deposition and trial, opining that the report prepared by the plaintiff's expert contained serious flaws and errors and could not be relied upon in determining the value of Pendum.

Mr. Clarke noted that the expert largely ignored Pendum's high degree of financial distress. For example, as part of the guideline public company method, the expert used valuation multiples from profitable companies to value Pendum, which was not profitable. In addition, Mr. Clarke identified an error in the expert's calculations that led to an overstatement (by double) of one of the expert's valuation multiples. Further, the expert used guideline mergers and acquisitions that were not comparable to Pendum and were missing certain key financial data. Mr. Clarke also identified a number of unreasonable assumptions underlying the expert's DCF analysis, which was premised upon outdated projections that predicted the company would undergo a dramatic turn-around after restructuring its debt.

Citing Mr. Clarke's criticisms of the plaintiff's expert's report, Chancellor Strine wrote that he "did not come away persuaded" of the \$110 million value offered by the plaintiff's expert, and that the company's "poor performance and operational mess" showed in the lower value its assets received at the auction. Because the Court concluded the sale was commercially reasonable, the price the buyer paid for the assets was reasonable as well. Ruling for the defendants, the Court required the plaintiff to pay the \$4 million it owed under its guaranty.

David G. Clarke, ASA was assisted by William Jeffers, CFA and William P. McInerney, ASA. The defendants were represented by Peter J. Walsh, Jeremy W. Ryan, Daniel A. Mason, and Ryan T. Costa of Potter Anderson & Corroon LLP.