STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF DAKOTA | FIRST JUDICIAL DISTRICT
Other: Civil

Michael Tate, Joseph Shuster and Jack Ayers, individually and on behalf of all other individuals similarly situated,

Plaintiffs,

vs.

Restaurant Technologies, Inc., Jeffery R. Keisel, John C. Rutherford, Jonathon O. Grad, Philip A. Clough, Robert E. Weil and John Does 1 – 5,

Defendants.

Court File No. ______________

COMPLAINT

RECEIVED

JUL 22 2009

DAKOTA COUNTY
DISTRICT COURT

INTRODUCTION

This Complaint is brought as a class action by and on behalf of holders of common stock in Restaurant Technologies, Inc. ("RTI"), a company with its headquarters in Eagan, Minnesota. The action is brought against certain individuals who serve as officers and directors of RTI as well as RTI. As set forth below, the above-named Individual Defendants breached certain fiduciary obligations owed to RTI common shareholders by engaging in wrongful conduct including usurping corporate opportunities in violation of well-established duties of loyalty. Further, these Individual Defendants violated well-established duties of candor by misrepresenting certain facts in connection with a recent merger/recapitalization scheme and repeatedly failing to exercise due care in the operation of RTI. To the extent these Individual Defendants did not violate these duties directly, they engaged in conduct designed to interfere with the ability of other Defendants to carry out their fiduciary obligations. Defendants'

wrongful conduct recently peaked in connection with an effort to wipe out the interests of RTI common shareholders through a merger/recapitalization process which was flawed, tainted, and unfair. Defendants' conduct caused millions of dollars of damage to the class of common shareholders of RTI.

THE PARTIES

1. Plaintiff Michael Tate ("Tate") is a former member of the Board of Directors of RTI and is a common shareholder. Tate directly holds 67,282 shares of common stock in RTI for which he paid nearly $400,000. Defendants now assert that Tate's investment in RTI is worthless. Tate is a Minnesota resident residing in Plymouth, Minnesota.

2. Plaintiff Joseph Shuster ("Shuster") is a former member of the Board of Directors of RTI and is a common shareholder. Shuster holds 82,500 shares of common stock of RTI for which he paid nearly $500,000 and is the beneficial owner of other shares held by his spouse. Defendants now assert that Shuster's investment in RTI is worthless. Shuster is a Minnesota resident residing in New Prague, Minnesota.

3. Plaintiff Jack Ayers ("Ayers") is a holder of 9,667 shares of common stock of RTI for which he paid nearly $50,000. Defendants now assert that Ayers' investment in RTI is worthless. Ayers' current principal residence is in Tucson, Arizona. (Collectively, Tate, Shuster and Ayers will be called "Plaintiffs" or "Class Representatives".)

4. Defendant Restaurant Technologies, Inc. ("RTI") is a Delaware corporation with its principal place of business and headquarters located at 3711 Kennebec Drive, Eagan, Minnesota. RTI's main business is to provide bulk cooking oil to numerous fast food restaurants.

5. Defendant Jeffery R. Keisel ("Keisel") is currently the Chief Executive Officer of RTI and has served in that position since 2005. Keisel, on information and belief, currently resides in Shoreview, Minnesota.

6. Defendant Robert E. Weil ("Weil") is currently the Chief Financial Officer of RTI and has held that position since 2007. Weil, on information and belief, currently resides in Minneapolis, Minnesota.

7. Defendant Philip A. Clough ("Clough") is a director of RTI and has held that position since 2005. Clough is also an officer of ABS Capital Partners, an entity which, along with its affiliates ABS Capital Partners IV L.P., ABS Capital Partners, IV Offshore L.P., and ABS Capital Partners IV Special Offshore L.P. (collectively, "ABS") holds preferred stock in RTI. Clough, on information and belief, offices at 400 East Pratt Street, Baltimore, Maryland.

8. Defendant John C. Rutherford ("Rutherford") became a director of RTI in 2009. Prior to becoming a Director, Defendant Rutherford advised people that he "called the shots" at RTI. Rutherford is a founder of Parthenon Capital LLC and its affiliate entities including PCIP Investors, J&A Founders Fund, Parthenon Investors L.P., Parthenon Investment II and PCap L.P. (collectively "Parthenon"). Parthenon holds mostly preferred stock in RTI. Rutherford, on information and belief, offices at 265 Franklin Street, Boston, Massachusetts.

9. Defendant Jonathon O. Grad ("Grad") became a director of RTI in 2006. Grad is a managing partner of Parthenon and, on information and belief, offices at 265 Franklin Street, Boston, Massachusetts (jointly, Rutherford, Grad, Clough, Weil and Keisel may be identified as the "Individual Defendants").

10. Defendants John Does 1 -5 conspired with, assisted and engaged in the wrongful conduct asserted herein which has sought to deprive Plaintiffs and the putative class of their rights.

JURISDICTION AND VENUE

11. The wrongful conduct engaged in by the Defendants took place in the State of Minnesota and, for the most part, in Dakota County. This Court has jurisdiction over the subject matter of this action and venue is proper since the wrongful conduct took place primarily at the corporate headquarters of RTI which is located in Eagan, Minnesota in Dakota County.

12. RTI is incorporated in Delaware, but is headquartered in Minnesota. The claims asserted herein arise out of and pursuant to well-established violations of Minnesota and Delaware common law. These violations include breaches of fiduciary obligation involving the requirement that officers and directors be candid and forthright in their communications with shareholders and the duty of loyalty prohibiting officers and directors from engaging in self-dealing conduct through, for example, usurping corporate opportunities and looting RTI for their own purposes. Additionally, the tortious interference with the ability of others to carry out their fiduciary obligations occurred in Minnesota. Finally, the unfair merger process which involved the issuance of fraudulent and misleading offering materials by the Defendants was orchestrated out of the company's headquarters.

CLASS ALLEGATIONS

13. Plaintiffs bring this action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of a class of common shareholders consisting of persons and entities who purchased or otherwise acquired common stock in RTI or enjoyed the right to purchase such stock and who held the stock or the rights during all times relevant to the wrongdoing described

below. Approximately $15 million in common stock in RTI was sold between 1999 and 2001 at various prices including $5 a share, $15 a share and $19 a share. Approximately 1.6 million shares of RTI common stock were outstanding at the time of a recently completed merger/recapitalization process which was tainted by material misrepresentations and omissions of material fact.

14. Excluded from the class are Defendants, current officers and directors of RTI, members of their immediate family and their legal representatives, heirs, successors and assigns, Parthenon and ABS.

15. The members of the class are believed to exceed 150 people or entities holding approximately 1.6 million shares in RTI or rights to purchase such shares and, therefore, are so numerous that joinder of the members is impracticable.

16. Plaintiffs' claims are typical of the claims of the members of the class, because Plaintiffs are holders of common stock in RTI. Plaintiffs will fairly and adequately protect the interests of the class and have retained counsel who are experienced and competent in class actions and securities litigation. Plaintiffs have no interests that conflict with the interests of the class.

17. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class are:

a. Whether the Individual Defendants violated their duty of loyalty to RTI by (i) having RTI pay for the preferred shareholders' legal counsel, (ii) upstreaming money to a Parthenon affiliate in connection with a recent merger/recapitalization, (iii) failing to negotiate a reduction in the interest rate being paid to the preferred shareholders, (iv) failing to consider various means to capitalize RTI, and (v) unnecessarily employing preferred stock offerings in 2005, 2008 and 2009 which benefitted Parthenon and ABS to the detriment of the RTI common shareholders;

b. Whether the Individual Defendants violated their duty to RTI common shareholders by failing to consummate an initial public offering in 2006 which would have generated over $30 per share for common shareholders of RTI;

c. Whether Defendants Keisel and Weil failed to provide complete and accurate information to the RTI Board of Directors which would have permitted the RTI Board to exercise reasonable business judgment in the management of the business;

d. Whether a recent recapitalization/merger was tainted as a result of self-dealing including having RTI commit to pay an affiliate of Defendant Rutherford's company (Parthenon) millions of dollars in "management services" fees;

e. Whether proxy materials recently used in a recapitalization/merger and supplemental information provided to RTI common shareholders during the merger process were false and misleading by failing to disclose material facts including the true value of RTI and whether in light of a vote in which less than 41% of the RTI common shareholders approved the merger/recapitalization, the merger/recapitalization should be declared void in accordance with the terms of the proxy materials;

f. Whether Defendant RTI's recapitalization/merger process was entirely fair;

g. Whether the director Defendants performed their duties and obtained the best possible price for RTI common shareholders;

h. Whether Defendants conspired to violate the rights of class members;

i. Whether Defendants Rutherford and Cough in conjunction with their affiliation with Parthenon and ABS have been unjustly enriched and should be required to disgorge any monies wrongfully obtained at the expense of RTI shareholders;

j. Whether Defendant Rutherford and Defendant Clough tortiously interfered with Defendant Keisel and Weil's efforts to meet their fiduciary obligations to RTI common shareholders; and

k. Whether Defendants Keisel and Weil violated their duty of care in carrying out their responsibilities as officers of RTI.

18. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Further, as the damages suffered by individual members of the class may be relatively small, the expense of

individual litigation makes it impossible for the members of the class to individually address the wrongs done to them.

THE COMPANY – ITS HISTORY, FINANCING AND PROSPECTS

19. In 1999, RTI was spun off from a company called MVE Holdings, Inc. The essential business activity of RTI is to provide bulk cooking oil management to restaurants through a unique distribution device which permits it to not only supply the cooking oil efficiently, but to also pick up used oil ("yellow grease") and recycle it. RTI enjoys contracts with McDonald's, McCormick & Schmick's, Chili's and numerous other high volume users of cooking oils.

20. RTI's revenue stream and earnings have increased dramatically over the years as set forth below:

Year	Reported Revenue (Millions)	EBITDA (Earnings Before Interest, Taxes and Depreciation) (Millions)
2004	79.7	1.1
2005	100.6	2.9
2006	135.3	8.3
2007	188.2	10.4
2008	261.6	11.5

In 2006, given the company's contracts and growth pattern, one investment banking firm estimated that the company's enterprise value may be over $500 million. After that estimate, RTI's revenues and earnings continued to increase.

21. Until very recently, RTI's prospects were repeatedly touted by Defendant Keisel. For example, on May 2, 2006 he wrote to RTI shareholders that "2005 was both a significant growth year and foundation year for our company. . . . Our sales growth was stronger in 2005 with penetration continuing with McDonald's, White Castle, and Fuddruckers, McCormick &

Schmidt's plus others . . . 2005 was a good year for RTI and we look forward to a strong 2006." Subsequently, in his year end 2006 letter to RTI shareholders, Defendant Keisel repeated the same mantra, "In summary, 2006 was another record for RTI and a year in which our focus on profitability has yielded significant results . . . 2006 was a year we are proud of as evidenced by our growth and profitability gains . . . we are optimistic about both our short term and long term prospects." Again in 2007, Defendant Keisel wrote to RTI shareholders stating "We are making strides in taking advantage of the zero trans fat oil market . . . We have made numerous improvements in how we manage our business."

Based upon Defendant Keisel's statements, including his statement in 2007 that both management and the Board were "focused on maximizing the returns to all our shareholders," none of the Plaintiffs nor the putative class had reason to suspect that Defendant Keisel, in coordination with the other Defendants, was actually engaged in a scheme designed to wipe out the interests of RTI's common shareholders through a course of conduct involving fraud and deceit.

22. In order to finance the build out of its distribution network, after receiving investments from Plaintiffs as well as the putative class members, RTI engaged in a series of preferred stock offerings including:

Year	Preferred Stock	Amount Raised
2001	A-1	19 million
2002	A-2	5.5 million
2004	A-3	25 million
2005	A-4	10 million
2008	B-1	9 million
2009	B-2	7.9 million

23. In RTI's 2001 A-1 preferred stock offering, Parthenon, in which Defendant Rutherford is a founder, invested heavily. Parthenon subsequently invested more money in later

offerings. Additionally, ABS, in which Defendant Clough is an officer, invested in the A-3 preferred stock offering in 2004 and additional monies in later offerings. In making these investments, Defendants Rutherford and Clough, on behalf of Parthenon and ABS, insisted on receiving enormous interest/dividend payments which ranged from 20% – 30% annually. They also took over control of RTI.

24. When Parthenon originally invested in RTI in 2001, it misrepresented its intentions by suggesting that it was committed to "building successful partnerships" while "preserving the company's independence and culture" and not engaging in "day to day control." These statements were false. Beginning in 2001, Parthenon, through Defendant Rutherford, began to place its own representatives on the RTI Board and, by the end of 2004, Parthenon and ABS controlled a majority interest on the Board of RTI. In 2005, despite RTI's growth and prospects, Defendant Keisel was brought in with Parthenon's blessing to assume day to day control of RTI and, over time, Defendant Keisel ousted the officers and employees of RTI who had originally founded the company. During 2007, when Plaintiffs attempted to approach the RTI Board with questions and concerns, they were told to talk to Defendant Rutherford who candidly told Plaintiffs that he "called the shots" regarding RTI despite the fact that he did not even serve on the RTI Board at the time nor was he an officer of RTI.

25. In taking control of the RTI Board, one of the individuals Defendant Rutherford selected to serve as Parthenon's "representative" was Drew Sawyer who, in November 2005, when asked about protecting the interests of RTI common shareholders, candidly stated "F*** the common." Another individual who filled a "Parthenon seat" on the RTI Board was Jack Grunwald. Although Grunwald was originally selected to fill a "Parthenon seat" in 2001, in early 2009, the Defendants instead appointed Grunwald as a purportedly "independent" director

allegedly obliged to protect the interests of RTI common shareholders in connection with a merger/recapitalization. However, this merger/recapitalization was actually designed to wipe out the interests of common shareholders to the benefit of Defendants Rutherford, Grad and Clough's companies.

26. The preferred stock offerings generated many benefits for Parthenon (Defendant Rutherford and Grad) and ABS (Defendant Clough) including the ability to control the RTI Board of Directors and management of RTI. The additional benefit was that the preferred offerings had huge financial benefits including interest/dividend rates ranging from 20% to 30% a year. This benefit allegedly "accreted" so that by the time the tainted recapitalization/merge process took place in 2009, the $19 million raised in the A-1 preferred stock offering during 2001 had purportedly increased to a value of $86 million or more than 400% in seven years. Despite the fact the preferred stock offerings which took place in 2005, 2008 and 2009 were not in RTI's interests, the Individual Defendants orchestrated those offerings without arm's-length negotiations or input from the common shareholders for the benefit of Parthenon and ABS.

27. The annualized return being "accreted" on the preferred stock was so enormous that Parthenon and ABS, working through Defendants Rutherford, Clough and Grad, repeatedly elected to not have RTI pursue courses of action which would have been in the financial interests of RTI and the RTI common shareholders. Defendants Rutherford, Clough and Grad interfered with the duty which Defendants Keisel and Weil owed RTI and engaged in a course of conduct designed to usurp RTI's corporate opportunities for the benefit of Parthenon and ABS. For example, in 2006, RTI considered an initial public offering. Defendants Rutherford, Grad and Clough scuttled this initial public offering in an effort to maximize the egregious return on the investment made by Parthenon and ABS and did not even advise the RTI Board of their activities

surrounding the initial public offering. On information and belief, had the initial public offering taken place in 2006, common shareholders of RTI would have received in excess of $30 per share for their RTI common stock based upon an enterprise valuation of over $400 million for RTI. However, given the enormous rates of return which Parthenon and ABS investments were "accreting," Defendants Rutherford, Clough and Grad elected not to proceed with a promising initial public offering. Despite having attended numerous meetings with numerous investment banking firms, Defendant Keisel did not even inform the RTI Board of the possibility of conducting an initial public offering which would have paid the RTI common shareholders more than $30 a share. By scuttling this initial public offering, these Defendants ensured that additional value would "accrete" to Parthenon and ABS, thereby allowing Parthenon and ABS to receive a greater interest in the company's prospects.

28. In 2006, when considering an initial public offering, one investment banking firm placed a high end enterprise value on RTI of over $500 million. In 2008, Defendants sought to put RTI up for sale and again obtained an enterprise value from an investment banking firm of over $350 million for RTI. The proposed sale was never consummated purportedly because of a change in the credit markets. As the credit markets stabilized and loosened, Defendants elected to squeeze out the common shareholders of RTI by recapitalizing and merging the company employing a flawed "valuation" suggesting that the enterprise value of RTI was only $140 million. At an informational meeting concerning the merger/recapitalization, Defendant Grad went so far as to misrepresent RTI's enterprise value by stating that it was now less than $100 million. The recapitalization/merger of RTI was implemented through a distribution of proxy materials, supplementary materials and oral statements which were false and misleading. The impact of the recapitalization/merger was to upstream all of the company's prospects to a few