

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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

Civil No. 09-cv-02076 MJD/JJG

Plaintiffs,

v.

**DEFENDANT RESTAURANT
TECHNOLOGIES, INC.'S
MOTION FOR EXPEDITED
HEARING AND BRIEFING
SCHEDULE**

Restaurant Technologies, Inc.,
Parthenon Capital LLC, Jeffrey R.
Kiesel, John C. Rutherford, Jonathan
O. Grad, Zachary F. Sadek, Phillip A.
Clough, and Robert E. Weil,

Defendants.

Pursuant to Rule 57 and Local Rule 7.1, Restaurant Technologies, Inc. moves for an expedited hearing date and compressed briefing schedule with respect to its recently filed Motion for Partial Summary Judgment on Plaintiffs declaratory judgment claim (Count IX of the Amended Complaint). Count IX seeks to have the Court declare—after the fact—that a June 24, 2009 recapitalization merger of Restaurant Technologies, Inc. (“RTI” or the “Company”) is void and must be rescinded. RTI has received a hearing date on June 24, 2010, for the Motion for Partial Summary Judgment. RTI, however, requests an expedited hearing and compressed briefing schedule. RTI believes that an expedited is warranted because of the time-sensitive nature of the relief

sought and the ongoing harm Plaintiffs' unnecessary and unfounded claim for equitable relief is causing RTI and other third parties.

As set forth more fully in the Memorandum in Support of RTI's Motion for Partial Summary Judgment, RTI's board of directors recently determined that the circumstances are now very favorable for a potential sale of the Company and that it therefore would be in the best interests of all shareholders to explore that possibility. Affidavit of Ken Larson ("Larson Aff.") ¶ 2. The Board's business judgment is based on, among other things, the current financial position of the Company, the recent strengthening of the capital markets, the relatively short-term nature of the Company's agreement with its lenders, and advice received from financial advisors. *Id.* RTI's financial advisors have informed it that currently the credit and equity markets are creating a positive environment for company sales. *Id.* ¶ 3. The Board believes that now is the best time to sell the Company and any delay in the sales process could result in a lower price. *Id.* ¶ 4. In addition, the current debt market has improved significantly versus the past eighteen months and RTI believes that through a sale it can greatly reduce its borrowing costs, and increase cash flow, by replacing its current long term debt. *Id.* ¶ 5. Reducing these costs as quickly as possible will be beneficial to all shareholders. *Id.*

In order to attract potential buyers and to obtain the highest possible offer for the Company, however, it is necessary to assure such potential buyers that this litigation will not interfere with the sale transaction—that is, that there will be no equitable relief preventing or undoing the previous transaction and that the

ongoing claims will involve money damages only. As long as the recapitalization merger is potentially subject to being declared void, no buyer is likely to be willing to take the risk of buying the Company. Affidavit of Kelly Drake ¶ 4. It is important for RTI's summary judgment motion to be decided quickly so that defendants and other third parties, including RTI's shareholders, are not unnecessarily harmed by further delay of the sale process. Any delay in the sales process could result in a lower price or even a failure to sell the Company.

RTI is only seeking summary judgment on one count of Plaintiffs' Amended Complaint. RTI's motion involves the narrow issue of whether Plaintiffs' declaratory judgment claim to have a corporate transaction declared void and rescinded is appropriate or whether money damages would be sufficient to remedy any injury. No further fact discovery is necessary to decide this narrow issue. The legal issues involved are narrow, thus, an expedited schedule will not burden either Plaintiffs or the Court. The interests of justice justify expediting this hearing.

Accordingly, RTI respectfully requests that the Court schedule the hearing on the Motion for Partial Summary Judgment as soon as possible prior to June 24, 2010, and that the Court set an expedited and compressed briefing schedule.

Dated: May 11, 2010

DORSEY & WHITNEY LLP

By s/ Michelle S. Grant

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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

Civil No. 09-cv-02076 MJD/JJG

CERTIFICATE OF SERVICE

Plaintiffs,

v.

Restaurant Technologies, Inc., Parthenon
Capital LLC, Jeffrey R. Kiesel, John C.
Rutherford, Jonathan O. Grad, Zachary F.
Sadek, Phillip A. Clough, and Robert E.
Weil,

Defendants.

I hereby certify that on May 11, 2010, I caused the Defendant Restaurant Technologies, Inc.'s Motion for Expedited Hearing and Briefing Schedule to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

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I further certify that I caused the proposed order to be filed with court via e-mail to The Honorable Michael J. Davis at davis_chambers@mnd.uscourts.gov and to the e-filing recipients above.

Dated: May 11, 2010

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Deanna J. Stower

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U.S. District Court

District of Minnesota

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Case Number: 0:09-cv-02076-MJD-JJG
Filer: Restaurant Technologies, Inc.
Document Number: 79

Docket Text:

MOTION to Expedite *Hearing and Briefing Schedule of Motion for Partial Summary Judgment filed by Restaurant Technologies, Inc.* by Restaurant Technologies, Inc.. (Attachments: # (1) Certificate of Service)(Grant, Michelle)

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