Rival Bidder Protests $61M Sale Of Fuddruckers To Luby's Article

By Rachel Feintzeig Of DOW JONES DAILY BANKRUPTCY REVIEW (6/22/10)

WILMINGTON, Del. (Dow Jones)--A rival bidder is seeking to block the sale of Fuddruckers Inc. to cafeteria chain Luby's Inc. (LUB), and warns that the company's choice buyer may not have the "financial wherewithal" to close the deal.

Tavistock Ventures Inc. urged a judge to deny the transaction--valued at around $61 million--at a hearing Tuesday in Wilmington, Del., where Fuddruckers is seeking court approval of the sale.

Private-equity firm Tavistock had itself jockeyed for control of the hamburger restaurant chain at a nine-hour-long auction last Thursday. The company served as the stalking horse with a $40 million bid. Yet according to Fuddruckers, Luby's prevailed at that auction. Luby's winning offer included a $61 million price tag plus the possibility of an additional $2.65 million.

Now Tavistock is questioning the auction results. The firm claims that Luby's may not have been a qualified bidder. Randy Michelson, an attorney representing the private-equity firm, suggested that Luby's offer doesn't adhere to the requirements laid out in Fuddruckers's bid rules, which mandated bidders' offers not be subject to financing contingencies.

"That was the standard that Tavistock was held to," said Michelson, of Michelson Law Group. "That was the standard that the debtor agreed the other bidders would be held to."

Michelson also said that Luby's could be facing "some potential financial distress." She pointed to recent store closings, a lack of cash on hand and losses of $26.4 million for the fiscal year ended August 26, 2009, as reported by the company. Michelson said Fuddruckers had refused to provide her with more information about Luby's offer or financial status, which forced her to come to court to seek permission to launch an investigation.

Michelson also raised questions about a conversation that representatives for Luby's had with those for Fidelity National Holdings LLC, the third bidder for Fuddruckers, during last week's auction. She suggested the talks may have tainted the auction results and violated the bid rules.

"We don't intend to interfere with a legitimate sale," she said. "We do intend to find out what the facts are."

Christine Lynch, an attorney representing Fuddruckers, dismissed the conversation during the auction as "pleasantries" and insisted that Luby's was a legitimate bidder with the right and ability to purchase the company.

Two professionals, Luby's chief financial officer, Scott Gray, and an investment banker who had overseen the sale process, also took to the stand to bolster Fuddruckers's arguments. They stressed that, while the restaurant industry has been facing a bleak outlook amid the consumer-spending decline, the company had enough funds to close the deal and was taking steps to heal its own business. Gray blamed losses from earlier this year on the fallout from a host of store closings and said more recent figures demonstrated a healthier balance sheet.

Lynch, of Goulston & Storrs PC, also enumerated the benefits that selling to Luby's would have for Fuddruckers's creditors. The proposed transaction to the Texas company would provide unsecured creditors with "as much as 100 cents on the dollar," Lynch said. She added that the stalking horse bid initially put forth by Tavistock would only let unsecured creditors see 15 cents on the dollar.

"The auction was an unbelievable success," Lynch said. "It yielded substantially more than anyone anticipated."

Fuddruckers hopes to close the sale by July 26, though the company must first must convince Judge Brendan Shannon to authorize the deal. Shannon is set to take up the topic again at a hearing Wednesday morning.