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PCD Bankruptcy Trust Can't Extinguish $50M Mezz Loan

By **Andrew Scurria**

Law360, New York (April 06, 2015, 6:58 PM ET) -- The litigation vehicle left behind to dig up money for creditors to defunct Personal Communications Devices LLC cannot wipe out $49.5 million that mezzanine debt investors supplied to finance a $242 million buyout of the wireless manufacturer, a New York bankruptcy judge ruled Friday.

The recovery trust established under PCD's confirmed Chapter 11 plan fell far short of showing that second-lien debt owed to DLJ Investment Partners LP should be recharacterized as equity and erased, according to an opinion by U.S. Bankruptcy Judge Alan S. Trust in Central Islip, New York.

The decision found that the legal analysis "overwhelmingly" favored DLJ, which partially funded PineBridge Investments LLC's 2008 acquisition of a controlling stake in PCD and itself received a 10 percent equity stake in return for an additional $5 million in equity financing.

In October 2013, two months after PCD sought Chapter 11 protection, unsecured creditors sued PineBridge, DLJ and other investors for allegedly causing the bankruptcy, claiming they recklessly expelled key executives and mismanaged company finances.

Under PCD's bankruptcy plan, the litigation trust assumed control of claims that could boost unsecured creditors' estimated 2.8 percent recovery on $175 million worth of claims. Judge Trust's decision affects only DLJ and leaves unaddressed claims against PineBridge and the hand-picked directors that took over PCD's board after the buyout.

"The court is not persuaded by plaintiff's argument that a minority shareholder who lacks the ability to control the course of a debtor's actions is in any event, without evidence or even allegations of bad acts, liable for the actions of the controlling interest owners," the judge said.

The lawsuit's claims centered around accusations that DLJ's extension of credit was really an equity investment in disguise designed to afford the firm control over PCD's financial decision-making. Pinebridge agreed in 2008 to subordinate its debt claims to DLJ's, effectively creating a new class of third-lien debt.

Lawyers argued that DLJ "passively acquiesced" while Pinebridge locked out other potential equity financing to avoid diluting shares.

The remaining claim, which the judge ordered that DLJ respond to within 21 days, takes aim at a lien the defendant has asserted over potential tort claims arising in the run-up to PCD's bankruptcy.

A former Credit Suisse AG unit, DLJ funds are now managed by Connecticut-based Portfolio Advisors LLC after a November 2013 spinoff.

Hauppauge, New York-based PCD, which acted as somewhat of a middleman between smaller mobile device manufacturers and U.S. carriers, sought bankruptcy protection with a prepackaged plan in hand to sell itself to Florida-based Quality One Wireless LLC. Judge Trust approved the $105.3 million transaction after the auction process failed to yield any other suitable buyers.

An eleventh-hour objection to the sale by AT&T Services Inc., which claimed the deal unlawfully terminated liability from PCD's contracts with AT&T, fell away after Quality One agreed to assume all of AT&T’s contract obligations.

PCD blamed a shift in the industry toward premium smartphones — a sector which has been dominated by Apple Inc. and Samsung Electronics Co. Ltd. — as well as CEO Philip Christopher's purported defection to a competitor. Christopher has claimed that he was driven out by PineBridge.

Primarily a supplier of nonpremium and niche handsets and wireless devices, PCD suffered an excess of inventory as device makers failed to meet sales targets and in 2012 was forced to liquidate much of its device holdings for markedly lower prices than projected, according to court records.

The liquidation trust is represented by Schuyler G. Carroll, Gary F. Eisenberg, Tina N. Moss and Barry J. Reingold of Perkins Coie LLP.

DLJ is represented by Christopher R. Harris, Adam J. Goldberg and Blake Denton of Latham & Watkins LLP.

The adversary complaint is Devices Liquidation Trust v. DLJ Investment Partners LP et al., case number 8:13-ap-08174 and the bankruptcy is In re Personal Communications Devices LLC et al., case number 8:13-bk-74303, in the U.S. Bankruptcy Court for the Eastern District of New York.

--Editing by Chris Yates.
