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Case : Selectica v Versata
Testimony Date : April 30, 2009
Expert Witness : Frank Allen Ferrell III Ph.D
Expert Type : Economic Consulting
Court : State: Delaware County: Wilmington
Pages : 74

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SELECTICA, INC. a Delaware corporation.
Plaintiff,
v
VERSATA ENTERPRISES, INC., a Delaware corporation, and TRILOGY, INC., a Delaware corporation.
Defendants,
-and-
VERSATA ENTERPRISES, INC. and TRILOGY, INC.
Counterclaim-Plaintiffs,
v
SELECTICA, INC., JAMES ARNOLD, ALAN B. HOWE, LLOYD SEMS, JIM THANOS and BRENDA ZAWATSKI.
Counterclaim-Defendants

Chancery Courtroom No. 12B
New Castle County Courthouse
Wilmington, Delaware
Thursday, April 30, 2009
9:31 a.m.

BEFORE: HON JOHN W NOBLE, Vice Chancellor

TRIAL TRANSCRIPT - VOLUME IV

CHANCERY COURT REPORTERS
500 North King Street - Suite 11400
Wilmington, Delaware 19801-3759
(302) 255-0525

1 THE COURT: Good morning.
2 MR. EVEN: Good morning, Your Honor.
3 THE COURT: I presume there are no
4 housekeeping details.
5 MR. VARALLO: There are a few, Your
6 Honor, but I think we are going to take them up after
7 Mr. Even finishes his examination.
8 THE COURT: That's fine. You may
9 proceed.
10 JAMES W. THANOS, resumes.
11 CROSS-EXAMINATION, Continued.
12 BY MR. EVEN:
13 Q Good morning, Mr. Thanos.
14 A Good morning.
15 Q Just to make sure, you still have in
16 front of you the plaintiff's exhibit binder that you
17 were provided yesterday, and also our exhibit binder?
18 A Yes. Yes, I do.
19 Q Great. Do you recall learning by
20 e-mail from Mr. Sems on November 13th, 2008 that
21 Trilogy had filed a 13D reflecting a five percent
22 interest in Selectica?
23 A Yes.
24 Q Could you turn to DX 613 in the

1 APPEARANCES:
2 GREGORY V. VARALLO, ESQ
LISA A SCHMIDT, ESQ.
3 JOHN D. HENDERSHOT, ESQ
ETHAN A. SHANER, ESQ.
4 Richards, Layton & Finger, P A
-and-
5 JONATHAN S. KITCHEN, ESQ.
CHRISTIAN H. CEBRIAN, ESQ
6 of the California Bar
Cox, Castle and Nicholson LLP
7 for Plaintiff and Counterclaim Defendants
8 MARTIN P. TULLY, ESQ.
MEGAN WARD CASCIO, ESQ.
9 LESLIE A. POLIZOTI, ESQ
RYAN D STOTTMANN, ESQ
10 Morris, Nichols, Arsht & Tunnell LLP
-and-
11 NOEL M. HENSLEY, ESQ
NICHOLAS EVEN, ESQ
12 JOHN TANCABEL, ESQ.
SARA FRANKFURT GAIL, ESQ
13 of the Texas Bar
Haynes and Boone LLP
14 for Defendants and Counterclaim-Plaintiffs

J. W. Thanos - Cross
1 defendants' binder. Do you have that document in
2 front of you?
3 A I do.
4 Q And is this the e-mail communication
5 at the bottom of the page from Mr. Sems to you and
6 others, alerting you to the filing of the 13D?
7 A What I have is from Lloyd Sems to a
8 bunch of us; subject, "Trilogy files five percent
9 13D," but there is no text.
10 Q Whether or not there is text, was that
11 a notification that you received from Mr. Sems on the
12 morning of November 13th that Trilogy had filed a 13D
13 in the subject matter line?
14 A Yes.
15 MR. EVEN: Your Honor, the top portion
16 of Defendants' Exhibit 13 was previously moved and
17 admitted under examination of, I believe,
18 Ms. Zawatski, but the bottom portion was not. I would
19 now move the admission of the entire document.
20 MR. VARALLO: No objection, Your
21 Honor.
22 THE COURT: All of DX 13 is admitted
23 without objection.
24 (Defendants' Exhibit No. 613 is

P. C. Harkins - Redirect
 1 THE COURT: Thank you, sir. You may
 2 step down Mr Hendershot, are you out of witnesses?
 3 MR. VARALLO: Your Honor, it's not
 4 that we are out of witnesses. We are not calling any
 5 further witnesses, but we will be taking the
 6 testimony, within our case, of the other side's
 7 witnesses. So we are not closing our case at this
 8 point, Your Honor
 9 MR. EVEN: Is Your Honor prepared for
 10 us to begin?
 11 THE COURT: I'm prepared to go for a
 12 few minutes, yes.
 13 MR. EVEN: Okay.
 14 THE COURT: Call your first witness, I
 15 guess.
 16 MR. EVEN: Yes. Your Honor, we call
 17 Professor Allen Ferrell.
 18 FRANK ALLEN FERRELL, III, having been
 19 duly sworn, was examined and testified as follows:
 20 MR. EVEN: Your Honor, we have a few
 21 binders to pass out before we begin.
 22 May I proceed, Your Honor?
 23 THE COURT: You may.
 24 DIRECT EXAMINATION

F. A. Ferrell, III - Direct
 1 Q Outside of Harvard, do you hold any
 2 other positions?
 3 A I do.
 4 Q What other positions do you currently
 5 hold?
 6 A I'm a member of the American Law
 7 Institute project on the application of U.S. financial
 8 regulations to foreign firms and cross-border
 9 transactions. I'm a member of the ABA task force on
 10 corporate governance. I'm an academic consultant to
 11 the committee on capital market regulation. I'm a
 12 academic fellow at the Financial Industry Regulatory
 13 Authority, known as FINRA. I'm also on FINRA's board
 14 of economic advisors.
 15 I'm also an academic fellow at
 16 Columbia Law School's program on the law and economics
 17 of capital markets. And I'm a research associate at
 18 European Corporate Governance Institute.
 19 Q Let's talk briefly about your
 20 educational background. Where did you receive your
 21 undergraduate degree?
 22 A Brown University.
 23 Q Did you receive other degrees at
 24 Brown.

BY MR. EVEN:
 1 Q Good morning, Professor Ferrell?
 2 A Good morning.
 3 Q What is your current occupation?
 4 A I'm the Greenfield Professor of
 5 Securities Law at Harvard Law School.
 6 Q How long have you been teaching at
 7 Harvard Law School?
 8 A Since 1999.
 9 Q What courses do you teach at Harvard
 10 Law School?
 11 A I teach securities regulation, law and
 12 finance, capitol market regulation, and contracts.
 13 Q Do you hold any other positions at
 14 Harvard?
 15 A Yes. I'm the chairman of Harvard
 16 University's advisory committee on shareholder
 17 responsibility. And I'm also a faculty associate at
 18 the Kennedy School of Government.
 19 Q What do you do as the chair of the
 20 shareholder advisory committee?
 21 A My committee advises the Harvard
 22 Corporation on how to vote its proxies with respect to
 23 corporate responsibility issues.
 24

F. A. Ferrell, III - Direct
 1 A I did.
 2 Q What was that?
 3 A Master's degree.
 4 Q What other degrees do you hold?
 5 A I hold a J.D. from Harvard Law School
 6 and a Ph.D. in economics from MIT.
 7 Q Have you ever practiced law with a law
 8 firm after graduating from Harvard Law School?
 9 A No.
 10 Q Have you been employed by any state or
 11 federal courts since graduating from Harvard Law
 12 School?
 13 A Yes.
 14 Q What positions have you held.
 15 A Law clerk to Judge Silberman, of the
 16 United States Court of Appeals for the D.C. Circuit,
 17 and Justice Kennedy, for the Supreme Court of the
 18 United States.
 19 Q Have you had any other employment
 20 experience before joining the Harvard Law School
 21 faculty?
 22 A Yes. I was a fellow in law and
 23 economics at Harvard University.
 24 Q Other than this matter, have you given