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March 10, 2023, 2:45 PM

Antin Infrastructure Accused of Reneging on \$230 Million Deal

By Mike Leonard

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2023-0283](#)

Bloomberg Law News 2023-03-21T20:22:44359957228-04:00
Antin Infrastructure Accused of Reneging on \$230 Million Deal

By Mike Leonard 2023-03-10T14:45:45000-05:00

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The founder of a Florida telecommunications company sued Antin Infrastructure Partners SAS, claiming the French private equity firm is trying to walk away from their planned \$230 million merger on a pretext.

The lawsuit—which seeks to compel closing of the deal—accuses Antin of reneging after raising bogus concerns about a minor legal claim filed against an affiliate of the telecom business, OpticalTel. OpticalTel agreed to indemnify Antin and set aside more than enough to cover a claim worth less than \$215,000, according to the complaint.

“Antin’s unwillingness to entertain a commercially reasonable solution to the problem of a third-party claim” is “curious, particularly in light of the special indemnification, and indicates that Antin has come down with a case of buyer’s remorse for other reasons,” the suit says.

Antin didn’t immediately respond to a request for comment Friday.

Court cases seeking to consummate a merger or acquisition when one party balks—a remedy called specific performance—are traditionally fairly rare. But Delaware’s Chancery Court, where the suit against Antin was filed, presided over a rash of similar disputes in 2020 and 2021 after the Covid-19 pandemic scuttled business transactions worldwide.

The cases included some major deals valued in the billions, including the \$16 billion sale of Tiffany & Co. to LVMH. The wave ebbed, only to be followed by an even higher-profile Delaware court fight in 2022: Twitter Inc.’s lawsuit seeking to force Elon Musk to complete their \$44 billion deal. Musk ultimately capitulated and bought the social media company.

Most recently, a blank-check company sued in February seeking to close its planned acquisition of a luxury casino in Manila—one of the largest in the Philippines—that’s backed by a Japanese billionaire with a checkered but colorful history.

The new suit by OpticalTel founder Mario Bustamante was made public Thursday after being filed under seal March 6. Bustamante, who’s also representing other former investors, says the six-figure legal claim against one of its subsidiaries was never material to the nine-figure deal, which also includes potential post-merger milestone payments.

The transaction’s structure, specifically its indemnification provisions, allegedly “walled off” Antin from any liability. But out of an abundance of caution, OpticalTel dissolved the relevant subsidiary, transforming it into at worst a bankruptcy-style claim that won’t affect Antin, according to the complaint.

Although such internal asset transfers were explicitly authorized by the merger agreement, Antin “combatively asserted that such steps would constitute further breaches of the merger agreement,” the suit says. “Antin’s resolve to cause buyer not to close had hardened.”

The March 3 deal closing date has now come and gone, and “sellers are suffering irreparable harm,” according to the complaint.

Bustamante is represented by Berger Harris LLP and Smith Villazor LLP.

The case is HControl Holdings LLC v. Antin Infrastructure Partners SAS , Del. Ch., No. 2023-0283, complaint unsealed 3/9/23 .

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