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Instant Brands Equity Owner Accused Of Lying To Lenders

By **Rick Archer**

Law360 (November 13, 2024, 5:06 PM EST) -- The litigation trustee for bankrupt kitchenware maker Instant Brands Wednesday filed suit in Texas bankruptcy court accusing the company's equity owner of lying to lenders and sending the company into Chapter 11 in order to collect $200 million in dividends.

In his complaint, trustee Alan Halperin said private equity firm Cornell Capital overpaid for Instant Brands by hundreds of millions of dollars, concealed that fact from term lenders, then used their loan and Instant Brand's cash to finance a dividend, the majority of which went to Cornell and its coinvestors.

"By January 2023, less than 21 months after the $345 million dividend, Instant Brands had run out of money," he said.

Illinois-based Instant Brands — which manufactures Instant Pot-brand appliances and Corelle, CorningWare and Pyrex brand dishware — filed for Chapter 11 protection in June 2023, saying rising costs and falling sales had left it low on liquidity and unable to sustain its $512.3 million in debt.

The court approved the company's reorganization plan in February after the sale of its assets to private equity firm Centre Lane Partners. The plan established a trust to pursue litigation on behalf of Instant Brand's creditors.

According to Halperin's complaint, Cornell acquired Instant Brands in 2019 from its three founders — including Instant Pot inventor Robert Wang — and within months discovered the company had overstated its 2018 earnings by $39 million.

Cornell threatened to sue the sellers, claiming it had overpaid them by $273 million, and entered into a settlement with them in 2020 that restructured the terms of the purchase agreement to reduce the sellers' noncash compensation, he said. Cornell subsequently filed a $268 million insurance claim for the loss, he said.

"Neither the representations and warranties claim, nor the restructuring agreement, were disclosed to the lenders in March 2021 when Instant Brands went to the market to borrow money for a dividend recapitalization," he said.

As a result, lenders were ignorant of Instant Brand's actual value when they gave it a $450 million term loan in April 2021, he said.

"Using those funds and $100 million of Instant Brands' balance sheet cash, Cornell Capital caused Instant Brands to issue a $345 million dividend on April 21, 2021, almost all of which went to enrich Cornell Capital and its co-investors ($200 million), the Instant Brands sellers ($101 million), and the management team ($4 million), leaving Instant Brands insolvent, and foisting Cornell Capital's losses on the lenders, who were significantly impaired," he said.

He said the dividend was justified after the fact through a memo issued by a chief financial officer who shared in the management team dividend payment and contained such "wildly unrealistic" figures as a more than $600 million valuation of the company's intangible assets and goodwill and a projection of more than 900% new product sales growth.

He said when Instant Brands found itself strapped for cash 18 months later, Cornell gave it a $55 million loan on "unfavorable" terms that included pledging all the tangible assets from the term loan collateral pool as collateral for the new loan.

"The UnSub Transaction was entered into and structured that way because Cornell Capital did not want to provide an equity infusion to an insolvent company, nor did it want Instant Brands to file for bankruptcy less than two years after the $345 million dividend was issued, which would be voidable under the bankruptcy code's two year look-back period," he said.

The loan was Instant Brand's "death knell," as negative publicity around the financing caused suppliers to tighten their credit terms, ultimately leading to the bankruptcy filing, he said. The term lenders have so far recovered only about $31 million of their $391 million in bankruptcy claims, and are seeking at least $400 million in damages.

"The trustee looks forward to prosecuting this case for the benefit of the unsecured creditors of Instant Brands," trustee counsel Kyle Lonergan said in a statement Wednesday.

Cornell issued a statement Wednesday calling the complaint "baseless and without merit."

The trustee is represented by Joshua J. Newcomer, Kyle A. Lonergan and James H. Smith of McKool Smith.

Counsel information for Cornell was not immediately available Wednesday.

The case is Alan D. Halperin v. Cornell Capital LLC et. al., case number 4:24-ap-3232 in the U.S. Bankruptcy Court for the Southern District of Texas.

--Additional reporting by Alex Wittenberg. Editing by Alex Hubbard.
