



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

OPENWAVE SYSTEMS, INC. and)
BERNARD PUCKETT)
)
Plaintiffs,)
)
v.) C.A. No. 2690-N
)
HARBINGER CAPITAL PARTNERS MASTER)
FUND I, LTD., HARBINGER CAPITAL)
PARTNERS SPECIAL SITUATIONS FUND, L.P.,)
JAMES L. ZUCCO and ANDREW BREEN)
)
Defendants.)

**ANSWER OF HARBINGER CAPITAL PARTNERS MASTER FUND I, LTD.,
HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS FUND, L.P.,
JAMES L. ZUCCO AND ANDREW BREEN**

Defendants' Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P., James L. Zucco and Andrew Breen respond to the allegations to the complaint as follows:

1. Admitted that this purports to be an action pursuant to 8 *Del.C.* § 225 for declaratory and injunctive relief.
2. Denied; except that defendants respectfully refer the Court and counsel to the complaint for a statement of the issues raised by the action.
3. Denied; except admitted that if Harbinger's nominations are disallowed by the Court, Messrs. Peterschmidt and Held would presumably be deemed to be elected and that the preliminary vote counts (confirmed by the certified vote) identified Messrs. Zucco and Peterschmidt as the two nominees obtaining the most votes.
4. Admitted.

5. The first two sentences of paragraph 5 of the complaint are admitted. The third sentence of paragraph 5 of the complaint is denied as stated; except that it is admitted that plaintiff Puckett is chairman of Openwave's board of directors and that he purports to bring this action in his capacity as a director of Openwave.

6. Admitted that defendants Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situation Funds, LP are shareholders of Openwave.

7. Admitted that defendant James L. Zucco was nominated by Harbinger as a candidate for a seat on the Openwave board of directors.

8. Admitted that defendant Andrew Breen was nominated by Harbinger as a candidate for a seat on the Openwave board of directors.

9. Denied as stated; except that defendants respectfully refer the Court and counsel to the original December 1, 2006 press release for an accurate statement of its contents. By way of further response, defendants state that the press release quoted by the plaintiffs reflects a later amendment of a press release that might have been issued on December 1st.

10. Denied; except that defendants respectfully refer the Court and counsel to the Company's bylaws for an accurate statement of the contents thereof and to the complaint in C.A. No. 2646-N for an explanation of defendants' understanding of the bylaws at issue.

11. Denied as stated; except that defendants respectfully refer the Court and counsel to the Company's bylaws for an accurate statement of the contents thereof.

12. The first sentence of paragraph 12 of the complaint is admitted. The second sentence of paragraph 12 of the complaint is denied as stated, given that Harbinger and other stockholders were led to believe that no annual meeting of stockholders would be held within 60 days after the anniversary of Openwave's 2005 annual meeting.

13. Denied; except that defendants respectfully refer the Court and counsel to the Company's bylaws for an accurate statement of the contents thereof.

14. Denied; except that defendants respectfully refer the Court and counsel to the Company's bylaws for an accurate statement of the contents thereof.

15. Denied.

16. The first sentence of paragraph 16 of the complaint is admitted. The second sentence of paragraph 16 of the complaint is denied.

17. Denied as stated; except the defendants respectfully refer the Court and counsel to the complaint in *Harbinger Capital Partners Master Fund I, Ltd. v. Openwave Systems, Inc.*, C.A. No. 2646-N for an accurate statement of the contents thereof.

18. Denied as stated; except defendants respectfully refer to Harbinger's proxy materials for an accurate statement of the contents thereof.

19. Defendants are without knowledge or information sufficient as to form a belief as to the accuracy of the first two sentences of paragraph 19 of the complaint. The remainder of paragraph 19 of the complaint is denied as stated; except that it is admitted that the Company communicated to Harbinger prior to the annual meeting its belief that the Harbinger nominations were invalid and that the Company would permit the provisional nomination of Zucco and Breen solely for purposes of conducting business at the annual meeting and without waiver of the right to challenge Harbinger's nomination in a court proceeding, and that Harbinger told the Company that it too reserved its rights to challenge the results of the election after the annual meeting was held.

20. Denied; except that defendants respectfully refer the Court and counsel to the January 16, 2007 announcement for an accurate statement of the contents thereof and defendants

state that Openwave's directors discussed various settlement proposals with defendants but did not reach agreement.

21. The first two sentences of paragraph 21 of the complaint are admitted. The remaining allegations of paragraph 21 of the complaint state a legal conclusion to which no responsive pleading is required.

22. Defendants are without knowledge or information sufficient to form a belief as to the accuracy of the first sentence of paragraph 22 of the complaint. The remaining allegations of paragraph 22 of the complaint are admitted.

23. Denied as stated; except admitted that Mr. Zucco received the most votes, distantly followed by Mr. Peterschmidt, and defendants respectfully refer the Court and counsel to the final certified results from IVS for the contents thereof.

24. Denied; except admitted that the Company maintains that Harbinger failed to comply with the Company's advance notice bylaws and that the Company maintains that Harbinger's purported nominees were therefore not validly nominated and properly before the stockholders for vote at the annual meeting.

25. Denied.

26. Denied.

Counterclaim and Affirmative Defenses

Because this action has been consolidated with Harbinger's prior pending action in C.A. No. 2646-N, defendants refer to the claims brought in that action in the place of counterclaims and affirmative defenses in this action. By way of further explanation, defendants state that the breaches of fiduciary duty described in the complaint in C.A. No. 2646-N constitute unclean hands and prevent plaintiffs from being awarded any equitable relief.

WHEREFORE, defendants respectfully request that the Court deny plaintiffs' requests for declaratory, injunctive and other relief and dismiss plaintiffs' complaint in its entirety with prejudice, and award defendants such other relief as may be proper, including an award of attorneys' fees and costs.

ASHBY & GEDDES

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