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Morgan Stanley Accused Of Draining Tops Markets Dry

By **Rick Archer**

Law360 (February 12, 2020, 7:18 PM EST) -- The litigation trustee for the Tops Markets supermarket chain filed suit against former equity owner Morgan Stanley on Wednesday, telling a New York bankruptcy court that the firm drove Tops into Chapter 11 by treating the company as a "piggy bank."

In his complaint, trustee Alan Halperin alleged that during the six years a Morgan Stanley-led investor group owned the supermarket chain, the investors had the company pay out more than $375 million in "lavish and illegal dividends" while running up $426 million in debt and leaving the company with $515 million in liabilities from underfunded pension plans.

"In six short years, Morgan Stanley and the other private equity investors bled a once-thriving regional grocery chain dry," Halperin said.

Tops, which filed for Chapter 11 in February 2018, has more than 170 locations across New York, Pennsylvania and Vermont. U.S. Bankruptcy Judge Robert Drain approved a $455 million reorganization plan that November.

A Morgan Stanley-led group of private equity investors bought Tops in 2007 for $300 million, $227 million of that funded by debt issued by Tops, said Halperin, the trustee for the litigation trust established in the Chapter 11 plan. Morgan Stanley "dominated" the company, appointing four of the five board members, he said.

He claimed that over the next six years, Morgan Stanley exercised that control to use Tops as a "piggy bank." Over that period, the company issued $375 million in dividends, with $270 million of those payments going to Morgan Stanley itself, he said. He said the dividends were paid for with $426 million in additional debt and reductions in needed capital expenditures.

"To Morgan Stanley, every dollar spent on improving Tops' stores was one less dollar that could be paid to it through a dividend," he said.

He said Tops was insolvent by 2009 as a result of the borrowing and dividends but that Morgan Stanley denied this, issuing a series of "superficial and conflicting" valuations based on inaccurate information, with some of them omitting pension liabilities or using unrealistic projections.

Halperin claimed Morgan Stanley was warned in 2008 that the company's primary union pension fund

was in danger of insolvency but that the firm refused to authorize additional funding, causing the company's unfunded withdrawal liability to grow from $85 million in 2007 to $515 million in 2013.

He said the investors ultimately sold the company to a group of six senior Tops executives in December 2013, who said at the time that Morgan Stanley's investment had "run its course."

"In other words, Morgan Stanley had removed all value from the company and rather than engage in an arms-length transaction with a third party purchaser, which they knew was not possible, they sold the company to management for a pittance, with Tops itself funding the vast majority of the purchase price," he said.

Counsel for Halperin and representatives of Morgan Stanley did not immediately respond to requests for comment late Wednesday.

Halperin is represented by Kyle A. Lonergan, James H. Smith, Mike McKool and Lewis T. LeClair of McKool Smith PC.

Counsel information for Morgan Stanley was not immediately available Wednesday.

The case is Alan D. Halperin v. Morgan Stanley Investment Management Inc. et. al., case number 20-08950, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Michael Watanabe.

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