

Relativity Suit Highly Critical of Wadhwa; He Says Firm Is Desperate

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Editor's note: This story was updated on July 12 to reflect the fact that Relativity initiated legal proceedings in this matter on June 10.

RALEIGH – The gloves have completely come off in what appears to be a knockdown, drag-out fight between Relativity Technologies and Vivek Wadhwa, the company founder and board chairman.

Relativity's lawsuit seeks relief in five specific areas and is filled with language such as "utter disregard" and "self-serving".

Relativity filed the details of its lawsuit on Thursday after news broke earlier in the week that Wadhwa was suing the Cary-based software company seeking repayment of loans, deferred salary and interest. The amount runs to more than \$500,000.

Relativity had earlier filed court documents on June 10 announcing plans to sue Wadhwa when attempts to settle the matter out of court failed.

Karen Porter, general counsel for Relativity, declined comment to Local Tech Wire. Steve Maysonave, the CEO Wadhwa recruited to take over the firm from him in 2003, was traveling.

Via e-mail, Wadhwa told Local Tech Wire: "I did not even know they had filed this suit until I got a call on my cell phone from David Ranii at 5:15 PM (on Thursday). Relativity filed this and has not yet even informed me or my attorneys of this, as is the normal procedure for lawsuits. Instead they started calling the press and emailing them copies of the complaint so that they could do interviews without my have a chance to review this or comment. This is very unusual behavior, and shows their desperation.

"After having reporters read me parts of this, I was amazed at the weakness and amateurishness of their complaint."

Ranii is a reporter for The News & Observer of Raleigh, NC.

The suit filed by Relativity is filled with e-mail texts sent to executives of Wachovia Bank, a terse "termination for cause" letter to Wadhwa, nearly 30 pages of financial documentation outlining the company's financials, and a complaint seeking five areas of "relief" that runs 10 pages. Relativity also included two articles – one, a column written by Wadhwa for BusinessWeek online and the second an interview in the Triangle Tech Journal as well as the texts of Wadhwa's employment agreement.

The column was labeled as "self-serving" that "reflected negatively on Relativity and its financial backers" and also "had damaged Relativity's reputation and ability to raise investment capital."

The Tech Journal interview, Relativity said, "again disparaged Relativity's investors" and was "in complete and utter disregard of his duties to Relativity."

The company accuses Wadhwa of hindering its attempts to raise new financing, which closed in March of this year from Wachovia Securities. The complaint said Wadhwa "in complete disregard of his duty as a director and responsibilities as an executive advisor to the president (1) refused to read the documentation, (2) refused to participate in Board discussions of the same, (3) refused to approve the restructuring and financing which was in the best interest of Relativity, (4) sent electronic mail to Relativity's employees and investors claiming that the board members, the investors, and Maysonave were engaging in unethical and illegal activities and (5) refused, despite repeated requests, to specify what those alleged activities were in sufficient detail to permit Relativity to determine the legitimacy or lack of legitimacy of such complaints."

Referring to the complaint about the documents, Wadhwa said: "I was sick in bed with 101 degree fever, and they wanted me to sign and review 100-200 pages of documents that I had never seen before or agreed to sign that same evening, and called and emailed repeatedly to harass me. Maysonave even called, demanded I sign all the docs, or resign from the board if I didn't! He actually hung up on me when I said I wouldn't sign without legal representation."

Wadhwa also said he had signed a proxy statement with Maysonave.

As part of the refinancing, Wadhwa said he agreed to dilute his share of ownership in the company to 7.5 percent from 22 percent. Before the financing closed, Wadhwa was the company's largest individual stockholder.

The Wachovia letters

The last straws in Wadhwa's relationship with Relativity apparently were e-mails he sent to Wachovia executives, including Ken Thompson, the chairman and CEO, on May 24. A Wachovia investment group invested in Relativity on March 8.

At that time, Wadhwa and Relativity were locked in a dispute about deferred salary, loans made to the company, and interest on both. Wadhwa said he wanted to be paid in a lump sum and calculated he was due more than \$500,000. Relativity offered to repay loans and salary through installments rather than lump sums – and without interest.

Wadhwa said that his contractual agreements with the company stipulated that he be repaid in full with interest and in a lump sum.

"I apologize in advance for having to escalate an issue to your Board, but feel very strongly that companies need to act in a responsible manner and Boards need to provide solid governance," Wadhwa wrote in his first e-mail. "The issue here is very minor by your standards, but is a major one for me and the employees of my company. Your Strategic Ventures group is helping to precipitate a major lawsuit."

In the second, directed to members of Wachovia's board, he wrote: "A recent transaction led by them has already created major problems for myself and the company I founded, and promises to embroil us all in nasty legal battles, and will lead to a lot of bad publicity for us all. This is a lawsuit I will easily win ..."

He later said that Relativity was using the fact it borrowed \$1.25 million from Silicon Valley bank rather than \$1.5 million "as an excuse to renege on a contract they had already signed" to repay him the loan.

"My only option now is to file a lawsuit," he said. "This will further weaken the company, and lead to bad publicity for all those involved in this transaction, including Wachovia."

Wadhwa used his Relativity e-mail account.

Maysonave sent a "Termination of Employment For Cause" letter to Wadhwa's Chapel Hill home the next day.

Maysonave cited a sentence in the employment agreement as the cause – "Any illegal, dishonest or other acts materially harmful to the Corporation (including harm to the Corporation's reputation)."

Wadhwa was told he would get a paycheck due on May 28 and another for accrued vacation time.

"Read my email to him!," Wadhwa said of the e-mail to Wachovia's Ken Thompson. "It was polite, constructive, and an attempt to get them to fulfill their responsibility as investors. I will forward this to you so you can publish it in its entirety. As Chairman, I have a responsibility to ALL shareholders, not only to those that happen to hold Board seats. I was trying to avoid the battle that is happening, and I don't require the CEO's permission to fulfill my responsibilities as Chairman."

In its suit, Relativity said Wadhwa's e-mails to Wachovia "caused material harm to Relativity's relationship" with the bank. The company was also critical of an e-mail Wadhwa had sent to Tom Hoops, another Wachovia executive who was involved in the financing deal. That e-mail was sent on May 21.

"This is a showdown that I have worked very hard to avoid, but feel like I have no other options left," Wadhwa wrote, referring to the fact Relativity had not yet agreed to pay him the funds he felt were due "These people have done everything they could to retaliate against me for trying to protect the interests of shareholders, and bringing attention to matters that they were trying to hide from existing and new investors."

Later, he added: "Any legal action I initiate will likely distract management and the Board, and provide more excuses for the company missing its targets and losing money, and get significant press attention. Major publications like Time Magazine, Forbes, BusinessWeek and the Wall Street Journal, and the local media have already been disclosed on matters from 2002/2003, and are likely to give feature coverage to this story when law suits are filed. This will not be good for any of us."

In the press

In January of this year, Wadhwa wrote a column for BusinessWeek online in which he criticized Relativity's investors. He described suffering a heart attack soon after closing on a round of financing for the firm. "While still in the Critical Care Unit, I received a phone call saying that my investors felt the need to renegotiate the terms of the current financing," he wrote. "My friends sent me lots of 'get well' flowers. My investors sent me a letter demanding that I step aside and allow the younger brother of a partner in one of their firms to take over ..."

In June of this year, Wadhwa recounted much of the heart attack episode.

“(R)ead these yourself and form your own opinion! I went to great pains to make the company look good, talked about how much we believed in it, invested our own money, turned it around, etc.,” Wadhwa wrote to LTW. “I expressed my feelings of betrayal by investors, and the shock of their behavior while I was close to death in the intensive care unit. I stated facts, and this is a free country. Also, if they felt I had breached my fiduciary duty, they should have informed me as is required in my employment agreement when this happened, not 4 months later!

Wadhwa signed an employment agreement with Relativity as Maysonave in January of 2003 as Maysonave took over as president and CEO. The agreement called for Wadhwa to receive \$100,000 in salary plus access to company benefits and reimbursement for expenses. The document also called for Wadhwa to adhere to non-compete and on-disclosure clauses.

The agreement specified that Wadhwa would be entitled to six months severance pay unless he was terminated “for cause” or he left the company voluntarily.

'Seeking relief'

In its filing, Relativity lists five “claims for relief”. They are:

- Declaratory judgment on termination for cause
- Breach of fiduciary duty as a member of the board of directors
- Breach of fiduciary duty as an employee
- Breach of employment agreement
- Unfair and deceptive trade practices

“Although Wadhwa cloaked his complaints under the guise of protecting Relativity, Wadhwa’s true motivation for disrupting the restructuring and financial plans of Relativity was his own personal financial interest and goals,” Relativity said.

A 'fair' deal for stockholders

The company cited a report from an independent advisor which found that the proposed deal’s terms “are fair to the common stockholders of Relativity Technologies, Inc. from a financial point of view.” Relativity also included the complete analysis by Tobin Advisors, which was dated Feb. 16, 2004.

The 28-page analysis – completed with detailed financials of Relativity’s performance dating to 1999 and through 2003 - reviewed the proposed investment by Wachovia Capital Investments. Wakfield Group, Noro-Moseley Partners and Intel Capital are also listed as investors. The stock purchase price for Preferred shares was \$6.38 million with the option of issuing Preferred stock later for another \$1.1 million.

Tobin Advisors put a valuation of between \$8.9 million and \$10.6 million before the investment.

In a “supplemental memorandum”, the report also discussed what would happen should Relativity have to be liquidated.

“Therefore, the common stockholders, even in sharing liquidation rights to the Company with the shareholders of the preferred classes of stock, fare better than the current, pre-Transaction premise allows them to in the case of a liquidation event of the company,” it said.

For the complete text of the BusinessWeek and Triangle Tech Journal articles, see:

www.businessweek.com/smallbiz/content/jan2004/sb20040121_6183.htm

www.triangletechjournal.com/news/article.html?item_id=394