

Comerica Wins Bid To Fast-Track Suit Over Card Processing JV

By **Matt Chiappardi**

Law360, Wilmington (June 05, 2014, 5:02 PM ET) -- A Delaware Chancery judge agreed Thursday to fast-track part of Comerica Bank's lawsuit against Global Payments Direct Inc. over their soured card processing services joint venture, ruling that the bank had at first glance presented a reasonable interpretation of the companies' agreements and shown it could be injured without quick court intervention.

In what was said to be his first time presiding in open court, Chancellor Andre G. Bouchard said that his thoughts that Comerica was making a reasonable interpretation of the agreements that govern the transition period after the joint venture dissolves were only a preliminary reading of the case, but ruled the bank had pleaded colorable claims that Global Direct was improperly preventing the bank from setting up a competing business right away.

The chancellor also found that Comerica had convinced him it might be irreparably harmed if the court did not weigh in on how to interpret the agreements between the two companies, and tentatively scheduled the matter for a multiday trial in July.

The dispute stems over a joint venture that was formed between the two companies' predecessors in 1996, later dubbed Global Payments Comerica Alliance LLC, to provide credit and debit card processing services for transactions between merchants such as retailers and educational institutions, according to court records.

The partners could not come to terms to renew in 2013, and the venture terminated at the end of January 2014, which, per a series of agreements between the companies, kicked off a yearlong wind-down transition period.

Comerica **filed a lawsuit** against Global Direct that was made public Monday, accusing its former partner of not cooperating with the transition, particularly refusing to transfer a share of customer contracts to enable the bank to set up a competing business. That had the effect of allowing Global Direct to immediately keep its part of the business going during the transition period while Comerica couldn't, and the bank wanted to have the court appoint a liquidating trustee to divide the merchant portfolio between them, according to the lawsuit.

Comerica had initially accused Global Direct of not even acknowledging the joint venture's dissolution, but the partner agreed in its formal reply that the tie-up had ended, and attorneys in court Thursday said that issue was no longer in dispute.

In court Thursday, Comerica argued that Global Direct was interpreting their service agreement in a vacuum, and that several other agreements between the two support the bank's contention that it should be able to service some of the customer contracts with another processor.

"Our interpretation is the only remotely acceptable interpretation," Comerica attorney Howard J. Roin of Mayer Brown LLP said. "You have to reject absurd readings."

Global Direct argued that Comerica is "projecting" what it wants onto the agreements, and not a single word requires it to migrate customer contracts from the joint venture to another processor.

Comerica is simply arguing against the effect of the agreements upon dissolution, but that was the deal that was negotiated when the firms first did business years ago, Global Direct attorney John P. Brumbaugh of King & Spalding LLP told Chancellor Bouchard.

When the chancellor asked what was the commercial logic of preventing the customer contract migration, Brumbaugh said that if you go back through years and pages of terms in the agreements between the two companies, it was something Comerica gave up in order to get several unspecified provisions in return.

Chancellor Bouchard also queried Comerica on why it chose to sue now, instead of closer to when the joint venture terminated. Roin said that the former partners were still negotiating and Comerica only brought the suit when it believed talks had finally broken down.

In his bench ruling, the chancellor said he believed the lawsuit could have been brought a little sooner, but still found Comerica had pleaded an effective case for expedited treatment.

He initially set the matter for trial over two days in early July, but said those dates may be changed due to scheduling conflicts.

Comerica is represented by Daniel A. Dreisbach, Thomas A. Uebler and Sarah A. Clark of Richards Layton & Finger PA and Howard J. Roin and Laura R. Hammargren of Mayer Brown LLP.

Global Direct is represented by Peter B. Ladig and Kyle E. Gay of Morris James LLP, and John P. Brumbaugh of King & Spalding LLP.

The case is Comerica Bank v. Global Payments Direct Inc. et al., case number 9707, in the Delaware Court of Chancery.

--Editing by Katherine Rautenberg.