



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

SCHULTE ROTH & ZABEL LLP,

Plaintiff,

v.

26 CAPITAL ACQUISITION CORP.,

Defendant.

C.A. No. \_\_\_\_\_

**VERIFIED COMPLAINT FOR TEMPORARY,  
PRELIMINARY, AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff Schulte Roth & Zabel LLP (“Schulte” or “Plaintiff”), by and through its undersigned counsel, hereby files this Verified Complaint against Defendant 26 Capital Acquisition Corp. (“26 Capital” or “Defendant”) and alleges the following facts:

**NATURE OF THE ACTION**

1. Plaintiff brings this action for a declaratory judgment prohibiting 26 Capital from liquidating and disbursing its assets and/or making any other payment, distribution, or other transfer to any of its stockholders, without first paying or making provision for all fees and expenses that are owed to Plaintiff (and to the extent necessary to accomplish this purpose, to also make provision for the payment of all amounts owed to any other claimants or creditors, known and unknown), as required by 8 *Del. C.* § 281(b), 8 *Del. C.* § 160, or as otherwise required by law.

2. Plaintiff is a limited liability partnership engaged in the practice of law in the State of New York. From August 2021 to July 2023, Plaintiff provided legal services to 26 Capital “in connection with a merger with Tiger Resort, Leisure and Entertainment Inc. (the “M&A Work”), and certain related finance work (the “Finance Work”), pursuant to a written engagement agreement between the parties (the “Letter of Engagement”).<sup>1</sup> 26 Capital presently owes Plaintiff \$1,913,865.38 in unpaid legal fees for both the M&A Work and the Finance Work. As of the date of this Complaint, Plaintiff commenced an arbitration with JAMS for payment of these unpaid fees, as is required by the forum selection clause in the Letter of Engagement.

3. 26 Capital is a special purpose acquisition company (“SPAC”) formed for the sole purpose of effecting a merger. On October 15, 2021, 26 Capital entered into an Agreement and Plan of Merger and Share Acquisition, as amended (the “Merger Agreement”) with Tiger Resort, Leisure and Entertainment, Inc. and its affiliates (the “UEC Parties”), pursuant to which 26 Capital would merge with an entity that owns and operates a resort casino.

4. On February 2, 2023, after negotiations on closing the merger broke down, 26 Capital and 26 Capital Acquisition LLC commenced an action in this Court (C.A. No. 2023-0128-JTL) (the “Merger Litigation”) seeking, among other

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<sup>1</sup> A copy of the Letter of Engagement is attached hereto as **Exhibit A**.<sup>1</sup>

things, specific performance requiring the UEC Parties to close the transaction contemplated by the Merger Agreement. On September 7, 2023, following trial, this Court issued its opinion and order denying specific performance.

5. On September 21, 2023, 26 Capital announced that it will liquidate its trust account (the “Trust Account”) and “redeem all of the outstanding shares of common stock that were included in the units issued to public stockholders in its initial public offering at a per-share redemption price of approximately \$10.95.” 26 Capital also announced that it had instructed Continental Stock Transfer & Trust Company (the “Trustee”), the trustee of the Trust Account, “to take all necessary actions to liquidate the Trust Account,” and that it intended to complete the distribution of the Trust Account within 10 business days of September 28, 2023” (*i.e.*, no later than October 13, 2023).

6. Upon information and belief, in the absence of intervention by this Court, 26 Capital will distribute all of its assets to stockholders and then dissolve, leaving Schulte without recourse against 26 Capital on the \$1,913,865.38 (plus statutory interest) that it is owed. As such, concurrently with this Complaint, Plaintiff has filed a Temporary Restraining Order to preserve the status quo by preventing 26 Capital from transferring any funds to 26 Capital stockholders without first making provision for payment of the amounts owed to Schulte.

Plaintiff has also filed a Motion to Expedite seeking expediting briefing on its motion for a preliminary and permanent injunction.

### **PARTIES**

7. Plaintiff Schulte is a limited liability partnership engaged in the practice of law in the State of New York with its principal office and place of business located at 919 Third Avenue, New York, New York 10022.

8. Defendant 26 Capital is a Delaware corporation with a principal place of business in Miami, Florida. 26 Capital is a Nasdaq-listed SPAC which was formed for the purposes of effecting a merger.

### **JURISDICTION**

9. This Court has subject matter jurisdiction under 10 Del. C. § 341 because Plaintiff seeks injunctive and other equitable relief.

10. 26 Capital is Delaware corporation subject to personal jurisdiction in Delaware.

### **FACTUAL BACKGROUND**

#### **The Letter of Engagement**

11. Schulte and 26 Capital entered into the Letter of Engagement, dated August 9, 2021, memorializing the terms and conditions of the parties' engagement. The Letter of Engagement states that Schulte was being retained to

represent and advise 26 Capital “in connection with a merger with Tiger Resort, Leisure and Entertainment, Inc.” *See Ex. A* at 1.

12. In addition to legal advice in connection with the M&A Work, at 26 Capital’s request and instruction, Schulte provided substantial legal services concerning the Finance Work. The Letter of Engagement states that: “If we are engaged to represent you in other matters (which may be evidenced by your instructing us on such matters), the terms of this letter shall apply to any such matters unless we enter into an express written agreement reflecting an alternate arrangement.” As such, the terms of the Letter of Engagement apply to the Finance Work.

13. The Letter of Engagement provides the precise terms for how, when, and at what rate Schulte would charge 26 Capital for its services. The Letter of Engagement explains: “The Firm, like most law firms, charges for legal services based principally on the hourly rates of the attorneys performing the work . . . The Firm’s hourly rates currently range from \$1,200 to \$1,695 for partners, \$460 to \$1,270 for special counsel and associates, and \$245 to \$580 for legal assistants and practice support personnel. Rates are adjusted periodically (including the start of each calendar year) and the applicable rates will be those in effect at the time the services are rendered. We modify our rates early in each calendar year and those modified rates will be reflected on any subsequent invoices.” *Id.* at 2.

14. Per the Letter of Engagement, 26 Capital and Schulte agreed “should the deal not be executed, [Schulte] will offer a break discount of 33% of fees accrued at [Schulte’s] standard rates (exclusive of expenses).” (the “Busted Deal Discount”). *Id.* The Busted Deal Discount applied to the M&A Work only, not the Finance Work (defined below). Schulte’s final invoice of \$1,913,865.38 reflects this Busted Deal Discount.

### **The M&A Work**

15. From August 2021 to July 2023, Schulte devoted hundreds of hours of to the M&A Work. Throughout this period, Schulte worked closely with management and other representatives of 26 Capital to, among other things, structure the cross-border transaction, negotiate and complete the Merger Agreement, draft the registration/proxy statement filed with the United States Securities and Exchange Commission (the “SEC”), help manage 26 Capital’s public disclosures related to the proposed transaction as well as its regular public filings, and manage the process of trying to close the proposed transaction.

### **The Finance Work**

16. From November 2022 through April 2023, Schulte also devoted hundreds of hours to the Finance Work, which included the drafting and negotiation of several delayed-draw promissory notes, preparing corporate

authorizations for the financing transactions, and assisting with the public disclosure of these transactions.

### **26 Capital's Failed Merger with the UEC Parties**

17. On October 15, 2021, 26 Capital entered into the Merger Agreement with the UEC Parties. Following the execution of the Merger Agreement, party negotiations to close the deal broke down following, among other things, a misalignment of interests, a status quo ante order from the Philippine Supreme Court, and dodgy bargaining.

18. On February 2, 2023, 26 Capital commenced an action in this Court against the UEC Parties seeking, among other things, specific performance under the Merger Agreement.<sup>2</sup>

19. On September 7, 2023, following a trial, this Court issued a decision denying 26 Capital's request for specific performance, but reserved for subsequent proceedings whether the UEC Parties breached the Merger Agreement and whether 26 Capital can recover damages for any such breach.

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<sup>2</sup> Schulte was originally counsel for 26 Capital in the Merger Litigation, before being replaced by Quinn Emanuel Urquhart & Sullivan LLP; Schulte invoiced 26 Capital for legal fees and expenses incurred in connection with the Merger Litigation. Although a dispute arose with regard to the fees due to Schulte with regard to the Merger Litigation, the parties ultimately reached agreement on terms with regard to fees and expenses incurred for the Merger Litigation and that reduced amount was ultimately paid to Schulte. During the course of these extended negotiations, Schulte repeatedly reminded 26 Capital of the fees and expenses owed for the M&A Work and Finance Work.

## **26 Capital Fails to Pay Schulte**

20. On April 21, 2023, May 31, 2023, and August 31, 2023, Schulte provided 26 Capital with invoices for the Finance Work (totaling \$225,455.17)<sup>3</sup> and repeatedly reminded 26 Capital of the amounts due for the M&A Work.

21. As of the date of this Complaint, 26 Capital owes Plaintiff a total of \$1,913,865.38 in legal fees and expenses for both the M&A Work and Finance Work.

## **26 Capital's Planned Liquidation and Dissolution**

22. On September 21, 2023, 26 Capital issued a press release announcing that, in light of the Court's decision denying specific performance, "[26 Capital] will be unable to complete a business combination within the time period contemplated by its Amended and Restated Certificate of Incorporation," and therefore "intends to liquidate the Trust Account, effective as of the close of business on September 21, 2023."<sup>4</sup> 26 Capital also announced that it instructed the Trustee "to take all necessary actions to liquidate the Trust Account."<sup>5</sup> 26 Capital

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<sup>3</sup> 26 Capital remitted one payment of \$48,781.00 for the Finance Work, but still owes \$225,455.17.

<sup>4</sup> See 26 Capital Form 8-K, filed with the SEC on September 21, 2022 (available at: <https://www.nasdaq.com/market-activity/stocks/aderu/sec-filings>).

<sup>5</sup> *Id.*



anticipates completing the redemption process within 10 business days after September 28, 2023.<sup>6</sup>

23. On September 22, 2023—one day after 26 Capital’s announcement of its intention to immediately liquidate its assets and redeem investors—Schulte sent a letter to 26 Capital demanding payment of the outstanding invoices not later than September 26, 2023. *See* Letter to 26 Capital, dated September 22, 2023, attached hereto as **Exhibit B**.<sup>7</sup> As of the filing of this Complaint, 26 Capital has not responded to Schulte’s letter, nor remitted payment.<sup>8</sup>

24. Upon information and belief, 26 Capital intends to dissolve or otherwise redeem its stock without first paying, or making provision for, the legal fees and expenses that Schulte is owed.

25. As explained in Plaintiff’s Motion for a Temporary Restraining Order, in the absence of a temporary restraining order prohibiting 26 Capital from liquidating its assets and dissolving without making provision for payment of Schulte, Schulte will be irreparably harmed as it will have no practical means of recovering the nearly \$2 million in fees and expenses for work done on 26 Capital’s behalf.

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<sup>6</sup> *Id.*

<sup>7</sup> Within this letter, Schulte included its attorney time entries as an exhibit. Schulte does not include that exhibit here (the time entries) for privilege reasons.

<sup>8</sup> The Letter of Engagement notes that Schulte’s billing statements “will be paid upon presentation.” **Ex. A**, at 2.

26. Moreover, 26 Capital’s planned dissolution would violate Delaware law, which prohibits a Delaware corporation from making distributions or payments to stockholders, whether in liquidation, dissolution, redemption of stock, or otherwise, where such distribution or payment will leave such Delaware corporation unable to pay its debts. *See 8 Del. C. § 281(b)* (a corporation that opts to liquidate must “pay or make reasonable provision to pay” all claims and obligations known to the corporation). Only after those debts have been paid, may “[a]ny remaining assets . . . be distributed to the stockholders of the dissolved corporation.” *Id.*

27. Indeed, 26 Capital acknowledged in its Form 10-K, filed with the SEC on April 17, 2023, “[t]he proceeds deposited in the Trust Account could become subject to the claims of the Company’s creditors ***which would have higher priority than the claims of the Company’s public stockholders.***”<sup>9</sup>

28. Accordingly, Schulte brings this action for a declaratory judgment that that 26 Capital cannot liquidate and disburse the funds from its Trust Account without paying or making reasonable provision to pay the debts owed to its creditors, both known and unknown, including Schulte.

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<sup>9</sup> 26 Capital’s Form 10-K, at page F-6, filed with the SEC on April 17, 2023 (available at <https://www.nasdaq.com/market-activity/stocks/aderu/sec-filings>) (emphasis added).

**COUNT I**  
**(DECLARATORY JUDGMENT)**

29. Plaintiff repeats and re-alleges the foregoing allegations as if fully set forth herein.

30. Under the Delaware Declaratory Judgment Act, Delaware courts “have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” 10 *Del. C.* § 6501.

31. According to the Delaware Declaratory Judgement Act, “[a] person ... whose rights, status or other legal relations are affected by ... contract ... may have determined any question of construction or validity arising under the ... contract ... and obtain a declaration of rights, status or other legal relations thereunder.” *Id.* § 6502.

32. The power of Delaware courts to grant declaratory relief is to “be liberally construed and administered.” *Id.* § 6512.

33. Under 8 *Del. C.* § 281(b), 26 Capital is legally obligated to pay all legal fees and expenses incurred in connection with Schulte’s representation and advisement of 26 Capital—*prior* to disbursing the funds associated with its Trust Account to stockholders.

34. Despite that legal obligation, 26 Capital has refused to pay Schulte the monies owed under the Letter of Engagement, and announced on September 21, 2023, that it plans to imminently liquidate and disburse all funds within the Trust

Account to its stockholders without making provision or any reasonable provision to pay its creditors, including Schulte.

35. 26 Capital's actions will thus leave Schulte with no practical recourse to recover the fees and expenses it is rightfully owed.

36. Schulte is therefore entitled to a declaratory judgment that the 26 Capital cannot liquidate and disburse the funds from its Trust Account without paying or making reasonable provision to pay the debts owed to its creditors, both known and unknown, including Schulte.

37. Schulte is additionally entitled to a declaratory judgment that 26 Capital be prohibited from instructing the Trustee to disburse the funds from 26 Capital's Trust Account to stockholders prior to 26 Capital paying or making reasonable provision to pay the debts owed to 26 Capital's creditors, both known and unknown, including Schulte.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment as follows:

A. Pursuant to the Motion to Expedite and the Motion for Temporary Restraining Order, filed concurrently herewith, enter an order expediting these proceedings with trial on the merits to occur as soon as possible;

B. Enter Orders temporarily, preliminarily, and permanently enjoining 26 Capital from liquidating and disbursing the funds associated with its Trust Account to stockholders prior to making provision to pay the debts owed to Schulte, and such other claimants and creditors (known or unknown) in full;

C. Award Plaintiff reasonable costs and attorneys' fees; and

D. Grant Plaintiff such other and further relief as the Court deems just and proper.

**COLE SCHOTZ P.C.**

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