

Elon Musk sued for reneging on agreement to buy Twitter for \$44 billion

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A Delaware judge ruled on Tuesday that the lawsuit by Twitter aimed at compelling Elon Musk to complete his commitment to buy the social media company will be fast-tracked, denying the billionaire's request to delay the start of the trial into early 2023.

Chancellor Kathaleen St. Jude McCormick of the Delaware Chancery Court ordered that a five-day trial would begin in October and vowed that it would be settled rapidly. She said that Musk's legal team was underestimating "the ability of this court...to quickly process complex litigation."

The chancellor agreed with Twitter's argument that the company would be harmed by a delay in the proceedings because of the market impact of uncertainty about the future of the company as a publicly traded entity.

McCormick said, "Those concerns are on full display in the present case. Typically, the longer the merger transaction remains in limbo, the larger the cloud of uncertainty cast over the company and the greater the risk of irreparable harm to the sellers." She added that, if the trial warranted more than five days, she would entertain a request from either side to extend it.

The legal dispute between the social media and microblogging site Twitter and the world's wealthiest individual Musk is the latest episode in the smarmy dealings of financial elites over the manipulation of stock values under conditions where the S&P 500 has fallen by more than 25 percent this year, wiping out a record \$7 trillion.

According to the Bloomberg Billionaires index, the top 500 richest people have lost a combined \$1.4 trillion since January. At the beginning of the year, Elon Musk had a personal net worth of \$300 billion. As of this writing, Forbes Real Time Billionaire index says that Musk's wealth stands at \$229 billion, or a decline

of \$71 billion over the last six months.

As for Twitter, its stock was trading at around \$48 per share when Elon Musk offered to buy the company for \$54.20 per share in April. On Tuesday, Twitter shares were trading at just over \$34 each, which is 37 percent less than Musk's offer and a market cap of \$30 billion.

While Twitter plays an important role globally today as a real-time high-tech newswire service for individuals and organizations to issue announcements and comment on contemporary events—and there are also 7,500 people who work there—its fate is now being determined by a handful of super-rich individuals who are preoccupied with one thing: halting the collapse of their personal wealth portfolios.

Chancellor McCormick made it clear that the primary concern of the Delaware Chancery Court in this case is not the ability of Twitter to continue to function or even the jobs of its employees but to bolster the ongoing viability of Wall Street mergers and acquisitions.

Musk signed a definitive acquisition agreement on April 25 to purchase Twitter for \$44 billion, make it his own personal property and remove it from the stock market. As Twitter's stock value fell dramatically through May and June, Musk announced on July 8 that he was backing out of the deal.

Knowing that his about-face would be contentious, Musk wrote in a letter to the Securities and Exchange Commission that his withdrawal was justified because Twitter was guilty of making "false and misleading representations" about the number of inauthentic accounts on its platform.

In response, Twitter sued on July 12 to compel Musk to go through with the purchase by using a provision of the agreement that is known in corporate law as "specific performance." Rarely used in merger-and-

acquisition disputes, Twitter is pursuing this remedy instead of seeking monetary damages because it expects the resulting deal with Musk, even if contentious, will lead to a substantial increase in the value of the company.

In most lawsuits of this type, specific performance is considered damaging for both parties and not a viable option. However, due to the scale of the Twitter deal—if it goes through, it will be the third-largest tech purchase of all time—the extreme measure is considered prudent in Wall Street circles.

According to the *New York Times*, the terms of Musk's commitment are clear: "So long as Twitter fulfills its obligations and the banks fund their commitments, Twitter 'shall be entitled to specific performance' of Mr. Musk's promise to buy the company for the price agreed upon."

During the hearing before Chancellor McCormick, Musk's attorneys argued that the start of the trial should be pushed back because of the time needed to investigate the issue of spam and fake Twitter accounts. Musk lawyer Andrew Rossman maintains that the real number of daily active users is critical for determining the true value of the company. He said that the investigation would be "extremely fact and expert intensive, requiring substantial time for discovery."

Twitter's lawyers responded that their lawsuit has nothing to do with the number of fake or real accounts on the platform, since the terms of the agreement did not make any commitment on this question. Twitter's lead attorney William Savitt said, "This issue that Musk says will require such complex discovery is an invented issue. It isn't what the merger agreement is about. So, it won't be what the case is about."

Savitt went on, "Musk has been and remains contractually obligated to use his best efforts to close this deal. What he's doing is the exact opposite; it's sabotage."

Some estimates put the negative financial impact on Musk's personal fortune at \$100 billion by being forced to go through with the Twitter acquisition. His obvious buyer's remorse puts paid to the cynical and self-serving statements Musk made in April about how "Twitter has extraordinary potential. I will unlock it," and how important Twitter is as a "platform for freedom of speech around the globe, and...for a functioning democracy."



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