

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

PICCADILLY RESTAURANTS, LLC, *et al.*,

DEBTORS.

**CASE NO. 12-51127
(JOINT ADMINISTRATION)¹**

CHAPTER 11

JUDGE ROBERT SUMMERHAYS

**MOTION FOR STAY OF ORDER CONFIRMING THE FIRST
AMENDED JOINT CHAPTER 11 PLAN OF PICCADILLY INVESTMENTS, LLC,
PICCADILLY RESTAURANTS LLC, AND PICCADILLY FOOD SERVICES, LLC**

Yucaipa Corporate Initiatives Fund I, L.P. (“Yucaipa”), files this motion (the “Motion”), pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure (“Rule 8005”), for the entry of an order staying the effectiveness of the *Findings of Facts, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC and Piccadilly Food Service, LLC* [P-1420] (the “Confirmation Order”). In support hereof, Yucaipa respectfully submits as follows:

BACKGROUND

1. On September 11, 2012, Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC (“PI”)(collectively, the “Debtors” or “Piccadilly”) filed these chapter 11 cases. They have operated their business as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Yucaipa is both the majority holder of equity interests in PI and a general unsecured creditor on account of its Management Services Fee Claim, which has been scheduled by the Debtors in the amount of \$452,791.18. *See* Statement of Financial Affairs [P- 263].

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La.), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La.).

{00339814-3}22942624.5

3. On October 23, 2012, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”).

4. On November 14, 2013, Atalaya Administrative, LLC (“Atalaya”) and the Committee filed the *First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, and Piccadilly Food Service, LLC, Proposed by Atalaya Administrative, LLC, Atalaya Funding II, LP, Atalaya Special Opportunities Fund IV, LP (Tranche B), Atalaya Special Opportunities Fund (Cayman) IV, LP (Tranche B), and the Official Committee of Unsecured Creditors [P-1241]* (the “Plan”) and the *First Amended Disclosure Statement for the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, and Piccadilly Food Service, LLC, Proposed by Atalaya Administrative, LLC, Atalaya Funding II, LP, Atalaya Special Opportunities Fund IV, LP (Tranche B), Atalaya Special Opportunities Fund (Cayman) IV, LP (Tranche B), and the Official Committee of Unsecured Creditors [P-1242]* (the “Disclosure Statement”).

5. On December 13, 2013, Yucaipa, Atalaya and the Committee exchanged valuation expert reports prepared by their experts (respectively, the “Yucaipa Report”, the “Atalaya Report”, and the “Committee Report”).

6. On January 6, 2014, Yucaipa filed the *Objection of Yucaipa Corporate Initiatives Fund I, L.P. to First Amended Joint Chapter 11 Plan Proposed by Atalaya Administrative LLC and the Official Committee of Unsecured Creditors [P-1324]* (the “Plan Objection”) and the *Objection of Yucaipa Corporate Initiatives Fund I, L.P. to Asserted Claim of Atalaya Administrative LLC [P-1325]* (the “Claim Objection”).

7. On January 31, 2014, Yucaipa filed the *Memorandum of Yucaipa Corporate Initiatives Fund I, L.P. in Support of Objection to First Amended Joint Chapter 11 Plan*

Proposed by Atalaya Administrative LLC and the Official Committee of Unsecured Creditors [P-1377] and filed an amended version on February 3, 2014 [P-1380].

8. On February 13, 2014 the Court entered the Confirmation Order, confirming the Plan and overruling the Plan Objection.

9. On February 27, 2014, Yucaipa filed its *Notice of Appeal of Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, and Piccadilly Food Service, LCC* [P-1440] (the “Appeal”).

LAW AND ARGUMENT

10. In determining whether to grant a stay pending appeal, courts apply the following factors: “(i) likelihood of success on the merits; (ii) irreparable injury if the stay is not granted; (ii) absence of substantial harm to the other parties from granting the stay; and (iv) service to the public interest from granting the stay.” *Hunt v. Bankers Trust Co.*, 799 F.2d 1060, 1067 (5th Cir. 1986).

11. While the moving party must show satisfactory evidence of all four criteria, no one criterion controls, and “not all of the four conditions need be given equal weight. These factors are not to be applied in a vacuum but instead must be viewed in light of the importance of the right of appeal and preservation of the status quo during the appeal.” *See, e.g., In re Miraj & Sons, Inc.*, 201 B.R. 23, 26 (Bankr. D. Mass. 1996) (citations and internal quotes omitted); *In re Howley*, 38 B.R. 314, 315 (Bankr. D. Minn. 1984).

A. Likelihood of Success on the Merits

12. In its Appeal, Yucaipa respectfully intends to challenge various legal and factual

determinations made by the Court.² Among other things, Yucaipa intends to argue that the Court erred in its legal and factual ruling that the Plan was fair and equitable under Bankruptcy Code sections 1129(b)(1) and 1129(b)(2)(C)(i).

13. The valuation produced by Deloitte Financial Services in the Atalaya Report is based on financial projections built upon unfounded and incorrect assumptions that overstate negative trends in guest count and average check and understate positive trends, which artificially depresses Piccadilly's enterprise value. Atalaya provided inadequate evidentiary support for these assumptions given their foundational role in the discounted cash flow analysis of the Atalaya Report. Thus, the Court's reliance on the Atalaya Report to find that the Plan does not violate the fair and equitable requirements of Bankruptcy Code section 1129(b), despite the flawed assumptions on which the Atalaya Report relies, is error.

14. Yucaipa also intends to show that the Court erred as matter of law by dismissing and not addressing the Claim Objection because the Court found Piccadilly to have a \$32 million enterprise value. *See See* Exhibit A, Excerpt; Ruling of Plan Confirmation Hearing, Before the Honorable Robert Summerhays, United States Bankruptcy Judge ("Transcript of Confirmation Ruling") at 18:11-14. The Court should have considered the merits of the Claim Objection because it is a violation of the fair and equitable requirement of Bankruptcy Code section 1129(b) for Atalaya to receive a recovery that exceeds the value of its actual claim. Moreover, a reduction of Atalaya's allowed claim will result in a reduced debt load for the company, which benefits all other parties in interest, including Yucaipa as both an unsecured creditor and holder of interests in PI.

² Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Yucaipa must file a statement of issues for appeal by March 13, 2014. Yucaipa reserves all rights with respect the statement of issues for appeal.

B. Yucaipa Will Suffer a Risk of Irreparable Harm if the Stay Is Not Granted

15. If the Confirmation Order is not stayed, Yucaipa may suffer irreparable harm by losing its right to appeal the Confirmation Order. The Confirmation Order provides for the immediate cancellation of all existing PI interests under the Plan. The occurrence of the Plan effective date creates a risk that Yucaipa's Appeal of the Confirmation Order could be deemed equitably moot.³ See *Compania Internacional Financiera S.A. v. Calpine Corp. (In re Calpine Corp.)*, 390 B.R. 508, 517 (S.D.N.Y. 2008) (appeal of an order confirming a plan that cancelled existing equity was moot because the plan had been substantially consummated and the equity holders did not seek a stay pending appeal).

16. Yucaipa simply seeks the opportunity to build its case and pursue its legal right to appeal the Confirmation Order. Even the possibility of permitting the Plan to strip Yucaipa of its right to the value of its interests in PI while, at the same time, depriving Yucaipa of its right to appeal the Confirmation Order and show that such a loss of its equity interests violates Bankruptcy Code section 1129(b), outweighs the harm (if any) to other parties if a stay is granted. Accordingly, Yucaipa respectfully submits that the Confirmation Order must be stayed in order to prevent potential irreparable harm.

C. There Will Be No Substantial Harm to Other Parties if the Stay is Granted

17. Piccadilly has continued to operate during its bankruptcy cases. Its operations will continue during the pendency of the Appeal. Thus, no party to these bankruptcy cases will suffer substantial harm if the Confirmation Order is stayed pending appeal.

³ Yucaipa contends that even if the Plan effective date occurs, it should not render Yucaipa's appeal of the Confirmation Order equitably moot.

D. Granting the Stay is in the Public Interest

18. Granting a stay pending appeal is in the public interest. “Plans providing management and/or senior creditors with the majority of stock or options in the reorganized company is a strong indicator that the company is being undervalued [in debtor’s disclosure statements], resulting in a windfall for management and the senior creditors.” *See In re Exide Techs.*, 303 B.R. 48, 60 (Bankr. D. Del. 2003).

19. When equity holders are “squeezed out” in non-bankruptcy corporate transactions, they can seek redress and obtain “fair value” for their equity through statutory appraisal actions. *See. e.g., Hintmann v. Fred Weber, Inc.*, No. 12839, 1998 WL 83052 (Del. Ch. Feb. 17, 1998) (unpublished decision). But when equity holders are wiped out in bankruptcy, the only protection available is the proper application of law by the Court. The inability to obtain appellate review, and therefore, direction regarding critical issues of bankruptcy law, including the proper (and improper) valuation methods, will repudiate the important public policy identified by Congress of protecting the interests of a debtor's equity holders.

20. Furthermore, the public has an interest in the fair and efficient bankruptcy system. The confirmation of a plan that contravenes the Bankruptcy Code is clearly outside the public interest. This factor also weighs in favor of the Court granting the stay sought in the Motion.

E. Yucaipa Should Not Be Required to Post a Supersedeas Bond

21. Rule 8005 provides that “the district court *may* condition the relief it grants under this rule on the filing of a bond or other appropriate security.” Fed. R. Bankr. P. 8005 (emphasis added). “The reason for requiring a bond is to secure the prevailing party against any loss that might be sustained as a result of an ineffectual appeal.” *Quarles v. Miller*, 193 B.R. 779, 782

(W.D. Va. 1996) (internal quotes omitted). As discussed above, the Appeal will not harm the reorganized Debtors, Atalaya, or any other party in interest.

22. “The posting of a supersedeas bond is not a prerequisite to obtaining a stay pending appeal; rather, [it] is discretionary.” *Quarles*, 193 B.R. at 782; *see also, In re United Merchants & Mfrs., Inc.*, 138 B.R. 426,430 (D. Del. 1992)(stay pending appeal granted without requiring a bond); *In re Byrd*, 172 B.R. 970, 974 (Bankr. W.D. Wash. 1994) (“[T]he court has discretion to grant a stay pending appeal under Rules 8005 and 7062(c) and it need not require the posting of a supersedeas bond.”). Accordingly, Yucaipa submits that no bond should be required.

CONCLUSION

WHEREFORE Yucaipa respectfully requests that the Court: (i) grant the Motion or any other appropriate relief while the subject of the appeal is pending; (ii) find that a bond in connection with the Motion is not required; and (iii) grant such other further relief as may be just and proper.

Dated: February 27, 2014.

Respectfully submitted,

/s/ Tristan Manthey

Tristan Manthey (La. Bar No. 24539)
Heller, Draper, Patrick & Horn, L.L.C.
650 Poydras Street, Suite 2500
New Orleans, Louisiana 70130
Telephone: 504-299-3300
Facsimile: 504-299-3399
E-mail: tmanthey@hellerdraper.com

-AND-

Thomas Walper (Admitted *Pro Hac Vice*)
E-mail: thomas.walper@mto.com
California Bar No. 96667
Daniel J. Harris (Admitted *Pro Hac Vice*)
E-mail: Daniel.harris@mto.com
California Bar No. 291300
Munger, Tolles & Olson, LLP
355 South Grand Avenue
Los Angeles, California 90071

Counsel for Yucaipa Corporate Initiatives Fund I, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM-ECF system, which will send notification of such filing to all parties requesting electronic service, and served a copy of the above and foregoing upon the persons/entities on the attached service list.

/s/ Tristan Manthey

TRISTAN E. MANTHEY

{00339814-3}

8