

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

IN RE:

PICCADILLY RESTAURANTS, LLC, *et al.*,

DEBTORS.

CASE NO. 12-51127

(JOINTLY ADMINISTERED)¹

CHAPTER 11

CHIEF JUDGE ROBERT SUMMERHAYS

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS,**

Plaintiff,

v.

**ATALAYA ADMINISTRATIVE, LLC,
ATALAYA FUNDING II, LLP, ATALAYA
SPECIAL OPPORTUNITIES FUND
(CAYMAN) IV LP (TRACHE B), AND
ATALAYA SPECIAL OPPORTUNITIES
FUND IV LP (TRANCHE B),**

Defendants.

ADVERSARY PROCEEDING

NO: _____

**COMPLAINT TO DETERMINE EXTENT, VALIDITY AND PRIORITY OF LIENS
AND SECURITY INTERESTS ASSERTED BY ATALAYA ADMINISTRATIVE LLC**

NOW INTO COURT, through the undersigned counsel, comes the Official Committee of Unsecured Creditors (the "Committee"), and files this Complaint to Determine the Extent, Validity and Priority of Liens (the "Complaint") against Atalaya Administrative, LLC ("Atalaya Administrative"), Atalaya Funding II, LLP ("Atalaya Funding II"), Atalaya Special

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

Opportunities Fund (Cayman) IV LP (Tranche B) (“Atalaya Cayman”), and Atalaya Special Opportunities Fund IV LP (Tranche B) (“Atalaya Fund IV”, and together with Atalaya Administrative, Funding II, Cayman, and Tranche B, the “Defendants”). In support hereof, the Committee respectfully shows the Court as follows:

I. JURISDICTION AND VENUE

1. On September 11, 2012 (the “Petition Date”), Piccadilly Restaurants, LLC (“Restaurants”), Piccadilly Food Services, LLC (“Food Services”) and Piccadilly Investments, LLC (“Investments”, and together with Restaurants and Food Services, the “Debtors”) filed voluntary petitions in this Court for reorganization under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. Since the Petition Date, the Debtors have continued to operate their businesses and manage their property as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. This Complaint commences an Adversary Proceeding pursuant to Fed. R. Bankr. P. 7001.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 502 and 506.

5. The Defendants are subject to the jurisdiction of this Court.

6. Venue over this matter is proper in this Court and this District pursuant to 26 U.S.C. § 1409.

7. This Adversary Proceeding is a core proceeding that may be heard and determined by the Bankruptcy Judge presiding over the United States Bankruptcy Court for the

Western District of Louisiana, LaFayette Division, pursuant to 28 U.S.C. § 157(b)(1) and 157(b)(2).

II. PARTIES

8. On October 23, 2012, the United States Trustee filed his Notice of Appointment of Creditors' Committee, forming the Committee.

9. Atalaya Administrative is a limited liability company formed under the laws of the State of New York and may be served via its registered agent, Corporation Service Company, 80 State Street, Albany, New York, 12207-2543.

10. Atalaya Funding II is a limited liability partnership formed under the laws of the State of Delaware and may be served via its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

11. Atalaya Cayman is a limited liability partnership formed under the laws of the Cayman Islands and may be served via its registered agent, Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Cayman Islands.

12. Atalaya Fund IV is a limited liability partnership formed under the laws of the State of Delaware and may be served via its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

III. RELEVANT FACTS

Introduction

13. The Committee brings this Adversary Proceeding to challenge the Defendants' assertion that they held perfected, first priority liens and security interests in all the Debtors' property as of the Petition Date under that certain Amended and Restated Loan and Security Agreement by and among Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, Piccadilly

Food Service, LLC, dated as of July 21, 2006 (the “Loan Agreement”), a true and correct copy of which is attached hereto as Exhibit “A”.²

14. Between the execution of the Loan Agreement and the Petition Date, the original lenders and agent under the Loan Agreement entered into a series of transactions purporting to transfer their rights in and to the Loan Agreement and associated loan documents (the “Loan Documents”) and the loans made thereunder to the Defendants (the “Loans”).

15. By this Complaint, the Committee asserts that certain rights and documents were improperly assigned. Due to such improper assignments and the Defendants’ failure to take certain required actions, liens and security interests that the Defendants assert in certain property of the Debtors were invalid and/or were not perfected as of the Petition Date. Specifically, and among other things, the Defendants failed take the necessary actions to cause their alleged liens and security interests to be valid and perfected against commercial tort claims, insurance policies and proceeds, deposit accounts, and indebtedness under letters of credit. Moreover, the Defendants failed to take the necessary steps to appropriately assume and be assigned certain indebtedness under the Loan Documents, causing harm to the Debtors.

16. Furthermore, the Defendants have failed to sufficiently account for the amounts they claim the Debtors owe under the Loan Agreement, which impacts the extent to which any properly perfected and enforceable security interests encumber the Debtors’ property.

Purported Assignments of the Loans and Loan Documents

17. On or about January 2, 2007, by virtue of various transactions with original lenders under the Loan Agreement and successor thereto, Atalaya Funding II purported to assume certain indebtedness under the Loan Agreement and the associated rights thereunder and under the other Loan Documents.

² The schedules and exhibits to the Loan Agreement are not attached to the Complaint.

18. Indebtedness and rights may be assigned under the Loan Agreement only to entities that constitute an “Eligible Transferee” thereunder, which is defined as follows:

“Eligible Transferee” means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of \$250,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of \$250,000,000, provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance company, or other financial institution or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates and Related Funds) total assets (including assets under management) in excess of \$100,000,000, (d) any Affiliate (other than individuals) of a Lender and any of Lender’s Related Funds, (e) any purchaser from a Lender of all or substantially all of such Lender’s portfolio of commercial loans, (f) so long as no Event of Default has occurred and is continuing, any other Person approved by Agent and Administrative Borrower (which approval of Administrative Borrower shall not be unreasonably withheld, delayed, or conditioned), and (g) during the continuation of an Event of Default, any other Person approved by Agent.

19. Upon information and belief, Atalaya Funding II was not an Eligible Transferee under the Loan Agreement upon the assignment thereof.

Failure to Adequately Describe Commercial Tort Claims

20. As of the Petition Date, the Debtors claimed to hold various potential causes of action listed on the Schedule of Causes of Action attached hereto as Exhibit “B”, which include, without limitation, commercial tort claims. Such commercial tort claims listed on the attached Exhibit “B”, together with any other commercial tort claims held by the Debtors as of the Petition Date, will be referred to herein as the “Commercial Tort Claims”.

21. Each of the Debtors is an organization and a claimant with respect to each of the Commercial Tort Claims.

22. The Debtors did not deliver a description with particularity of any of the Commercial Tort Claims or any other commercial tort claims to the Defendants or to the original parties to the Loan Agreement.

23. As of the Petition Date, the Defendants' asserted liens and security interests in the Commercial Tort claims were not valid and/or were unperfected.

Failure to Give Notice of Assignment to Insurance Policies

24. As of the Petition Date, the Debtors claimed to hold an interest in the eleven (11) insurance policies listed on the Schedule of Insurance Policies attached hereto as Exhibit "C" (the "Insurance Policies").

25. Upon information and belief, each of the Insurance Policies provides that no assignment of the policy will be permitted absent written consent of the insurer. See Exhibit "C" attached hereto.

26. As of the Petition Date, the Defendants did not obtain written consent of assignment from any of the insurers relating to any of the Insurance Policies.

27. As of the Petition Date, the Defendants' asserted liens and security interests in the Insurance Policies and their proceeds were not valid and/or were unperfected.

Failure to Properly Obtain Control in Deposit Accounts

28. As of the Petition Date, the Debtors claimed to hold twenty-one (21) deposit accounts (the "Deposit Accounts"), in which the Debtors held a total of \$1,479,281.84 in cash (the "Cash").

29. The Deposit Accounts are more particularly described on the Schedule of Deposit Accounts attached hereto as Exhibit "D".

30. As of the Petition Date, each of the Deposit Accounts was a demand, time, savings, passbook, or similar account maintained with a bank.

31. As of the Petition Date, none of the Deposit Accounts constituted a security or was evidenced by an instrument.

32. As of the Petition Date, none of the Defendants was the bank in which any of the Deposit Accounts was maintained.

33. As of the Petition Date, none of the Defendants was the deposit account customer with respect to any of the Deposit Accounts.

34. On or about December 31, 2004, the original agent, Restaurants and Hibernia National Bank executed that certain Deposit Account Control Agreement (Operating Account) (the "Operating Account Control Agreement").

35. A true and correct copy of the Operating Account Control Agreement is attached hereto as Exhibit "E".

36. The Debtors were not provided thirty days' prior written notice of any purported assignment of the Operating Account Control Agreement to the Defendants.

37. Capital One Bank, f/k/a Hibernia National Bank, was not provided thirty days' prior written notice of any purported assignment of the Operating Account Control Agreement to the Defendants.

38. On or about December 31, 2004, the original agent, Restaurants and Hibernia National Bank executed that certain Blocked Depository Account Agreement (Concentration Account) (the "Concentration Account Control Agreement").

39. A true and correct copy of the Concentration Account Control Agreement is attached hereto as Exhibit "F".

40. The Defendants did not enter into any written agreement with any of the Debtors or Capital One Bank, f/k/a Hibernia National Bank, providing for the assignment of the Concentration Account Control Agreement to the Defendants.

41. Capital One Bank, f/k/a Hibernia National Bank, did not provide its written consent to the Defendants for the assignment of the Concentration Account Control Agreement to the Defendants.

42. None of the Defendants was the original party to a signed written agreement granting the Defendants control over the Deposit Accounts.

43. As of the Petition Date, there were no signed written agreements purportedly granting control over the Deposit Accounts, with the exception of the Operating Account Control Agreement and Concentration Account Control Agreement.

44. As of the Petition Date, the Defendants were not in possession of the Cash held in the Deposit Accounts.

Indebtedness Under Existing Letters of Credit Not Held by the Defendants

45. As of the Petition Date, various letters of credit had been issued for the benefit of third parties on behalf of the Debtors (the "Letters of Credit").

46. True and correct copies of the Letters of Credit are attached hereto as Exhibit "G".

47. None of the Defendants is named within the four corners of any of the Letters of Credit.

48. The obligations under the Letters of Credit are not obligations of the Defendants under the Loan Agreement and, accordingly, any indebtedness thereunder is not secured by liens and security interests in the Debtors' property granted by the Loan Documents.

Failure to Sufficiently Account for Amounts Allegedly Owed

49. The Defendants contend that approximately \$28.1 million of principal, accrued interest and fees were outstanding under the Loan Documents as of the Petition Date, which includes amounts allegedly outstanding under the Letters of Credit. See Defendants' Proof of Claim filed March 14, 2013 [Claim # 398].

50. The Defendants have failed to sufficiently account for this alleged indebtedness.

51. Without limitation, the Defendants have not itemized the amount of debt held by each Defendant, how pre-petition payments made by the Debtors were applied to the alleged indebtedness, and how interest, costs and alleged fees were calculated.

52. Furthermore, upon information and belief, the Defendants swept in excess of \$468,000 from certain of the Debtors' accounts during the April of 2012 that has not been accounted for and that was not re-advanced under the Loan Agreement and other Loan Documents.

53. Any valid and perfected liens and security interests granted under the Loan Agreement and other Loan Documents only secure amounts outstanding thereunder as of the Petition Date. The Defendants should provide an accounting of the amounts asserted and demonstrate that such amounts are appropriate and proper under the Loan Documents.

COUNT I

Liens and Security Interests in Commercial Tort Claims Were Invalid and/or Were Unperfected as of the Petition Date

54. The Committee reasserts the allegations made in the foregoing paragraphs of this Complaint as if fully set forth in this Count verbatim.

55. Each of the Debtors is an organization and a claimant with respect to each of the Commercial Tort Claims.

56. The Debtors did not deliver a description with particularity of any of the Commercial Tort Claims or any other commercial tort claims to the Defendants or to the original parties to the Loan Agreement.

57. The Committee respectfully requests a determination that the liens and security interests that the Defendants assert in the Commercial Tort Claims were invalid and/or were unperfected as of the Petition Date.

COUNT II

Liens and Security Interests in Insurance Policies and Proceeds Thereof Were Invalid and/or Were Unperfected as of the Petition Date

58. The Committee reasserts the allegations made in the foregoing paragraphs of this Complaint as if fully set forth in this Count verbatim.

59. Upon information and belief, each of the Insurance Policies provides that no assignment of the policy will be permitted absent written consent of the insurer.

60. As of the Petition Date, the Defendants had not obtained written consent of assignment from any of the insurers relating to any of the Insurance Policies.

61. As of the Petition Date, the Defendants' asserted liens and security interests in the Insurance Policies and their proceeds were invalid and/or were unperfected.

62. The Committee respectfully requests a determination that the liens and security interests that the Defendants assert in the Insurance Policies and the proceeds thereof were invalid and/or were unperfected as of the Petition Date.

COUNT III

Liens and Security Interests in Deposit Accounts Were Invalid and/or Were Unperfected as of the Petition Date

63. The Committee reasserts the allegations made in the foregoing paragraphs of this Complaint as if fully set forth in this Count verbatim.

64. The Debtors were not provided thirty days' prior written notice of any purported assignment of the Operating Account Control Agreement to the Defendants.

65. Capital One Bank, f/k/a Hibernia National Bank, was not provided thirty days' prior written notice of any purported assignment of the Operating Account Control Agreement to the Defendants.

66. The Defendants did not enter into a written agreement with any of the Debtors or Capital One Bank, f/k/a Hibernia National Bank, providing for the assignment of the Concentration Account Control Agreement to the Defendants.

67. Capital One Bank, f/k/a Hibernia National Bank, did not provide written consent to the Defendants for the assignment of the Concentration Account Control Agreement to the Defendants.

68. None of the Defendants was the original party to any signed written agreement granting the Defendants control over the Deposit Accounts.

69. As of the Petition Date, there were no signed written agreements purportedly granting control over the Deposit Accounts, with the exception of the Operating Account Control Agreement and Concentration Account Control Agreement.

70. As of the Petition Date, the Defendants were not in possession of the Cash held in the Deposit Accounts.

71. The Committee respectfully requests a determination that the liens and security interests that the Defendants assert in the Deposit Accounts and the Cash held therein were invalid and/or were unperfected as of the Petition Date.

COUNT IV
**Indebtedness Claimed by Defendants Under the
Letters of Credit Is Not Secured by the Debtors' Property**

72. The Committee reasserts the allegations made in the foregoing paragraphs of this Complaint as if fully set forth in this Count verbatim.

73. None of the Defendants is named within the four corners of any of the Letters of Credit.

74. The obligations under the Letters of Credit are not obligations of any of the Defendants under the Loan Agreement and, accordingly, any indebtedness thereunder is not secured by liens and security interests in the Debtors' property granted by the Loan Documents.

75. The Committee respectfully requests a determination that the liens and security interests that the Defendants assert arise from the Loan Agreement and other Loan Documents do not secure any indebtedness arising under the Letters of Credit.

COUNT V
**Request for an Accounting and
Determination of Amount of Secured Indebtedness**

76. The Committee reasserts the allegations made in the foregoing paragraphs of this Complaint as if fully set forth in this Count verbatim.

77. The Committee request that the Defendants provide an accounting demonstrating the amounts that they assert were owed by the Debtors under the Loan Agreement and Loan Documents as of the Petition Date. Such accounting should itemize how much debt was held by which Defendant, how pre-petition payments made by the Debtors were applied to the asserted indebtedness, and how interest, costs and alleged fees were calculated.

78. The Committee respectfully requests a determination by the Court as to whether the foregoing amounts are proper and allowable under the Loan Agreement and other Loan Documents.

COUNT VI
**Improper Assignment of Debt and
Damages Arising Therefrom**

79. The Committee reasserts the allegations made in the foregoing paragraphs of this Complaint as if fully set forth in this Count verbatim.

80. Upon information and belief, at the time of assignment, Atalaya Funding II did not constitute an “Eligible Transferee” under the Loan Agreement.

81. If the Defendants contend that Atalaya Funding II constituted an “Eligible Transferee” under the Loan Documents during the applicable time, the Committee demands strict proof thereof.

82. The Debtors were damaged by certain improper acts taken by the Defendants, including, but not limited to, those arising from and related to the Defendants’ improper assignment of the Loan Documents.

83. The Committee respectfully requests a determination as to whether Atalaya Funding II constituted an “Eligible Transferee” under the Loan Agreement at the applicable time and judgment for damages caused to the Debtors in an amount to be proven at trial relating to or arising from any improper assignment to the Defendants of the Loan Documents.

WHEREFORE, the Committee respectfully requests that the Court enter judgment as follows:

(a) Count I: A determination that the liens and security interests that the Defendants assert in the Commercial Tort Claims were invalid and/or were unperfected as of the Petition Date;

(b) Count II: A determination that the liens and security interests that the Defendants assert in the Insurance Policies and proceeds thereof were invalid and/or were unperfected as of the Petition Date;

(c) Count III: A determination that the liens and security interests that the Defendants assert in the Deposit Accounts and the Cash held therein were invalid and/or were unperfected as of the Petition Date;

(d) Count IV: A determination that the liens and security interests that the Defendants assert arise from the Loan Agreement and other Loan Documents do not secure any indebtedness arising under the Letters of Credit;

(e) Count V: An order that the Defendants provide an accounting for the indebtedness asserted under the Loan Documents and a determination as to whether such indebtedness was properly determined and is secured by the liens and security interests granted by the Loan Documents;

(f) Count VI: A determination as to whether Atalaya Funding II constituted an “Eligible Transferee” under the Loan Agreement, and a judgment for damages caused to the Debtors in an amount to be proven at trial relating to or arising from any improper assignment to the Defendants of the Loan Documents;

(g) Judgment in favor of the Committee and against the Defendants for reasonable attorneys' fees and costs incurred by the Committee in connection with bringing and prosecuting this Adversary Proceeding;

(h) Cast all costs of this Adversary Proceeding upon the Defendants; and

(i) Grant the Committee such other relief as the Court deems just, equitable and proper.

Respectfully submitted, this 19th day of March, 2013.

GREENBERG TRAURIG, LLP

By: /s/ Shari L. Heyen
Shari L. Heyen (Admitted *Pro Hac Vice*)
HeyenS@gtlaw.com
Texas Bar No. 09564750
1000 Louisiana, Suite 1700
Houston, Texas 77002
Telephone: (713) 374-3564
Facsimile: (713) 374-3505

- And -

Lee B. Hart (Admitted *Pro Hac Vice*)
HartLe@gtlaw.com
Georgia Bar No. 502311
Terminus 200
3333 Piedmont Road, Suite 2500
Atlanta, Georgia 30305
Telephone: (678) 553-2100
Facsimile: (678) 553-2212

*Attorneys for the Official Committee of
Unsecured Creditors*