

**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**
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* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

**DEBTORS' OBJECTION TO ATALAYA'S MOTION FOR ORDER
ESTABLISHING A PROCEDURE FOR VALUATION OF SECURED
CLAIMS PURSUANT TO BANKRUPTCY CODE SECTIONS 506
AND 105 AND BANKRUPTCY RULE 3012**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), who submit this Objection (this "Objection") to the *Motion of Atalaya Administrative LLC for Order Establishing a Procedure for Valuation of Secured Claims Pursuant to Bankruptcy Code Sections 506 and 105 and Bankruptcy Rule 3012* (the "Valuation Motion") (Docket #703), as follows:

SUMMARY OF ARGUMENT

Atalaya's proposed July 2 valuation hearing date is premature. Instead, a valuation hearing for "plan purposes"² should be held in conjunction with plan confirmation, not before a reorganization plan is even filed. Further, the proposed procedures are flawed for a number of reasons. Atalaya's proposed abbreviated timetable would divert the Debtors' proper focus from

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² It is clear that the valuation sought here is "for plan purposes." Atalaya's prayer for relief is that the Court "value Atalaya's secured claim for plan purposes in accordance with the procedures identified herein and grant Atalaya such other further relief as is just and proper" (at page 6).

working on a disclosure statement and reorganization plan, which is due on July 8, just a week before Atalaya's proposed valuation hearing of July 2. Holding a valuation hearing a week before the Debtors' exclusivity period expires will *not* assist the Debtors in developing a reorganization plan, as Atalaya suggests; it will have the opposite effect. (Valuation Motion, at ¶8). Additionally, the submission of expert reports should be preceded by a sufficient amount of time for discovery to complete those reports. For these reasons, the Debtors request that the Court enter an order that (a) first establishes procedures for discovery, with realistic discovery deadlines, and (b) schedules a valuation hearing to run concurrently with plan confirmation.

The Current Exclusive Periods: July 8 and September 9

1. By Order entered on March 28, 2013 (Docket #692) (the "Exclusivity Order"), this Court granted the Debtors' *Second Motion for (i) an Increase of the Exclusive Period in which the Debtors May File a Plan in Order to Maintain the Exclusive Period, (ii) an Increase of the Time in which the Debtors Have Been Ordered to File a Plan, and (iii) an Increase of the Period in which the Plan Must Be Accepted in Order to Maintain the Exclusive Period* (Docket #526) (the "Second Exclusivity Motion"). Pursuant to the Exclusivity Order, the Debtors have been ordered to file a plan (and the exclusive period has been likewise extended) through **July 8, 2013**. The Debtors also have been granted the exclusive right, through **September 9, 2013**, to gain acceptance of a plan.

Restructuring Efforts and Filing a Reorganization Plan on July 8

2. At the hearing on the Second Exclusivity Motion, this Court was clear that it would be difficult for the Debtors to obtain further extensions of the exclusive period to file a plan. At this time, the Debtors do not intend to request such an extension, and intend to file a reorganization plan on July 8.

3. To accomplish this task, the Debtors' management team has been in discussions with the Unsecured Creditors' Committee (the "Committee") and its equity owner, Yucaipa Corp. Initiatives Fund I, LLC,³ to propose a joint plan of reorganization. Of course, in advance of filing a plan and an accompanying disclosure statement on July 8, additional work must be completed, including negotiations with other creditors concerning plan treatment issues.⁴

4. In the next three months, the Debtors' management team also must complete a number of significant restructuring tasks as part of preparing the reorganization plan. To accomplish this task, the Debtors' management team should be allowed to continue its focus on those tasks. Principal among those is negotiating key terms with Circus Properties I and Circus Properties II (collectively, "Circus").

5. Not only does Circus lease fifteen (15) cafeteria properties to the Debtors (collectively, the "Circus Leases"), but the outcome of the Debtors' negotiations will have a significant impact on both valuation and the plan. To date, the Debtors' management team has handled the negotiations of the Circus Leases without assistance from its real estate advisor, GA Keen & Company, based on the advisors' relative inexperience with Circus, the type of lease, and the secured lenders to Circus.

6. The Debtors are still negotiating a number of other lease amendments in their portfolio of cafeteria leases. Of the sixty-six (66) operating cafeterias, all but four (4) of those cafeterias are operated on leased properties. Thus far, the Debtors have assumed or have pending

³ Yucaipa Corp. Initiatives Fund I, LLC is the managing member of Piccadilly Investments, LLC ("Investments"). The sole member of Piccadilly Restaurants, LLC ("Restaurants") is Investments, and the sole member of Piccadilly Food Services, LLC is Restaurants.

⁴ See Paragraph 14, *infra*.

motions to assume a total of thirty-four (34)⁵ of the sixty-two (62) cafeteria leases, leaving the Debtors with twenty-eight (28) more cafeteria properties with leases to assume before stipulated assumption deadlines. Of that number, fifteen (15) are covered by the Circus Leases (collectively, the “Circus Leased Properties”). The Debtors are negotiating amendments to the remaining thirteen (13) leases. Depending on the lease, the amendments include (by way of example, only) extensions of the lease term, rent reductions and landlord contributions for leasehold improvements.

7. The outcome of these negotiations will make a significant difference in the Debtors’ EBITDA and, therefore, value.

Valuation should be as of the Plan Effective Date

8. Where the purpose of valuation relates to a plan or plan confirmation, “courts generally agree that . . . the relevant collateral should be valued as of the effective date of the plan.” 4 COLLIER ON BANKRUPTCY ¶ 506.03[6][g]. This logic holds true here, especially where the Debtors’ incomplete and ongoing restructuring efforts will contribute to EBITDA and value.

⁵ The Debtors (a) assumed twenty-one (21) cafeteria leases in the Order (Docket #684) that approved the Debtors’ *Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (Docket #532), (b) moved to assume six (6) additional cafeteria leases in the *Debtors’ Second Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (Docket #676), which is set for hearing on April 23, 2013, (c) moved to assume an additional six (6) cafeteria leases in the *Debtors’ Third Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (Docket #733), which is set for hearing on May 14, 2013, and (d) and moved to assume one additional cafeteria lease in the *Debtors’ Motion for an Order Authorizing the Debtors to (1) Execute an Amendment of an Unexpired Lease of Nonresidential Real Property Covering a Cafeteria Located in Biloxi, Mississippi, Pursuant to Section 363 of the Bankruptcy Code, (2) Assume the Biloxi Lease, as Amended, Pursuant to Section 365 of the Bankruptcy Code, (3) Satisfy the Cure Amount in Respect Thereof, and (4) Compromise the Landlord’s Claim Pursuant to Bankruptcy Rule 9019*, which is set for hearing on May 14, 2013 (Docket #735).

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9. Choosing a premature date for a valuation hearing in this case not only detracts from the Debtors' restructuring efforts, but leads to an incomplete valuation snapshot.

10. Moreover, it is difficult to understand usefulness of a valuation report that is prepared "for plan purposes" before a plan is formulated⁶ or filed.

Valuation Outside of the Context of a Plan for "Plan Purposes" is Premature and Flawed

11. Where the purpose of valuation is "for plan purposes," it is premature to order the preparation and exchange of valuation reports before a plan is formulated,⁷ and premature to conduct a valuation hearing before the filing of a reorganization plan.⁸

12. No doubt, the expense for this cart-before-the-horse endeavor will be borne, in one way or another, by the Debtors' estates. If the Court concludes that Atalaya is over secured, as the Debtors and the Committee believe, Atalaya will seek to add the related attorneys' fees and other expenses to the Debtors' tab. The Committee's fees and expenses are certainly borne by the estates. The Debtors conservatively predict that the costs for the entire valuation and related hearing that Atalaya proposes could cost the estates anywhere from \$250,000 to \$500,000.

13. On several occasions, the Debtors have requested that Atalaya propose a term sheet for its plan treatment to advance plan negotiations. Thus far, Atalaya has refused to negotiate with the Debtors. As a result of Atalaya's refusal to engage in meaningful plan negotiations, it cannot possibly know what position the Debtors will take with respect to the

⁶ Under the proposed procedures, the reports are completed within 30 days of the entry of an Order approving the Valuation Motion. The plan in this case will not be completed in 30 days.

⁷ See note 6, *supra*.

⁸ Indeed, at least one bankruptcy court has adopted a Local Rule that provides that valuation hearings under Section 506 "shall be considered in conjunction with the hearing on plan confirmation." LBR 3012-1 for the Bankruptcy Court of District of Colorado.

value of Atalaya's collateral, other than what its counsel has stated in Court. Yet the underlying premise of the Valuation Motion must be its misguided concern that the Debtors will take the position that the collateral is worth less than Atalaya's debt. If, for tactical reasons, Atalaya does not want to engage in plan negotiations, a much simpler and less costly way to determine if there is any need to conduct a full blown valuation hearing is to permit the Debtors to complete the plan and disclosure statement. After that work is complete, there will be little doubt about the Debtors' position with respect to value. At that point, Atalaya and the Debtors may be able to reach a stipulation as to value and avoid a valuation hearing that could easily consume a week on this Court's docket.

14. If the Court went forward with a valuation hearing on July 2, after the reorganization plan is filed, the Court would still need to conduct a confirmation hearing. If Atalaya does not vote to accept the proposed plan treatment, the confirmation hearing may include valuation and cram down issues that differ from the earlier valuation hearing, depending on the provisions of the plan.

Preparation of Expert Reports Should Be Preceded by Discovery

15. Finally, the proposed procedures are flawed in that they require the exchange of expert reports before the parties have had an opportunity to conduct sufficient discovery relative to the expert reports.

WHEREFORE, the Debtors object to Atalaya Motion, and request that the Court enter order that (a) first establishes procedures for discovery, with realistic discovery deadlines, and (b) schedules a valuation hearing to run concurrently with plan confirmation.

Respectfully submitted,

/s/ Elizabeth J. Futrell

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**Attorneys for Piccadilly Restaurants, LLC,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was served on those parties entitled to receive service via this Court's electronic case filing system on the 22nd day of April, 2013.

NEW ORLEANS, LOUISIANA, this 22nd day of April, 2013.

/s/ Elizabeth J. Futrell _____