

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-11960 (BLS)
: (Jointly Administered)
Debtors. : **Objections: August 25, 2009 @ 4:00 p.m. (ET)**
----- **Hearing: August 26, 2009 @ 12:00 p.m. (ET)**

**MOTION OF THE DEBTORS PURSUANT TO 11 U.S.C. § 105(a) AND
FED. R. BANKR. P. 9019 APPROVING STIPULATION REGARDING CLAIMS OF
TEXTRON FINANCIAL CORPORATION AND PROVIDING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by and through their respective undersigned counsel, hereby move this Court (the “Motion”) for entry of an order, pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* as amended (the “Bankruptcy Code”), and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing and approving a stipulation (the “Stipulation”) entered into by and among (i) the Debtors, (ii) Checkerco, Inc. (the “Buyer”) and (iii) Textron Financial Corporation (“Textron,” together with the Debtors and the Buyer, the “Parties”) regarding claims of Textron and providing related relief.² In support of the Motion, the Debtors respectfully represent as follows:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432-2813.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

3. On June 5, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors' chapter 11 cases (the "Cases") are being jointly administered. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On June 24, 2009, the Office of the United States Trustee filed a notice of appointment of an official committee of unsecured creditors. No trustee or examiner has been appointed in these chapter 11 cases.

5. A description of the Debtors and the events leading up to the Petition Date are set forth in the Amended Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief [Dkt. No. 34].

6. Prior to the Petition Date, Textron extended credit to the Debtors in the original principal amount of \$15,200,000 (the "Loans"). The Loans are evidenced by certain promissory notes dated as of June 28, 2000 and are allegedly secured by certain property of the Debtors (the "Textron Collateral") as provided under that certain security agreement dated as of June 28, 2000 and related agreements.

7. Textron maintains that the outstanding amount of the Loans as of the Petition Date is approximately \$1.9 million, while the Debtors' Schedules reflect that the sum of only \$1.5 million is due and owing, of which the sum of \$300,000 is listed as secured debt and \$1.2 million is listed as unsecured debt, which obligation is listed as disputed, contingent and unliquidated. Textron has not filed a proof of claim to date in these Cases on account of the Loans, the Textron Collateral and any other claim, right to payment or cause of action that Textron or any affiliate of Textron may have against any Debtor or any of the Debtor's estates.

8. On June 19, 2009, the Debtors filed a motion pursuant to section 363 of the Bankruptcy Code authorizing and approving, among other things, the sale to the Buyer of substantially all of the Debtors' assets (the "Sale"), including the Textron Collateral, free and clear of all liens, claims, encumbrances and interests, subject to higher and better offers (the "Sale Motion").³

9. In connection with the Sale and as set forth in the Sale Motion, the Debtors and the Buyer have entered into an Asset Purchase Agreement dated as of June 5, 2009 (as amended, the "Asset Purchase Agreement") pursuant to which the Buyer had agreed, among other things, to acquire the Textron Collateral for a purchase price of \$300,000 (the "Textron Purchase Price"). The Sale Motion, however, contemplates that an auction will take place which may result in a higher price being paid for the Textron Collateral and also allows Textron to credit bid for such assets pursuant to section 363(k) of the Bankruptcy Code.

³ The title of the motion is "Motion For Entry of Orders under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (I)(A) Approving Bidding and Auction Procedures and Bidding Incentives for the Stalking Horse Bidder; (B) Approving Notice Procedures for the Solicitation of Bids, an Auction, and the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Scheduling an Auction and Sale Hearing for the Sale of All or Substantially All of Debtors' Assets; (II) Approving the Sale of Substantially All of the Debtors' Assets and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief."

10. Textron maintains that the Textron Collateral is worth more than the Textron Purchase Price. To avoid the expense and uncertainty of litigation and to provide for an orderly Sale, the Parties have concluded that it is appropriate to resolve any and all disputes relating to the Textron Collateral on the terms set forth in the Stipulation attached hereto as **Exhibit A**.

11. As set forth in the Stipulation and subject to completion of the Sale, the Buyer has agreed to increase the purchase price payable on account of the Textron Collateral to \$500,000. In exchange therefore and as set forth in the Stipulation, Textron has agreed to (i) forever waive and discharge the Textron Claims on behalf of its itself and its affiliates, (ii) release its liens and security interests in the Textron Collateral and (iii) not to credit bid for the Textron Collateral at the auction.

RELIEF REQUESTED

12. By this Motion, the Debtors seek the entry of an order approving the Stipulation.

BASIS FOR RELIEF REQUESTED

13. This Court has the authority to grant the relief requested in this Motion pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provision of this title.” Bankruptcy Rule 9019(a) provides that, on motion by a debtor, the Court may approve a compromise or settlement after notice and a hearing.⁴ Fed. R. Bankr. P. 9019(a). Under this authority, the Third Circuit has emphasized that “to minimize litigation and expedite the administration of a bankruptcy estate, ‘[c]ompromises

⁴ Bankruptcy Rule 9019 provides in pertinent part that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

are favored in bankruptcy.’” Meyers v. Martin (In re Martin), 91 F. 3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy 9019.03[1] (15th ed. 1993)).

14. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether “the compromise is fair, reasonable, and in the interests of the estate.” In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (citation omitted). To reach such a determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. See Martin, 91 F.3d at 393.

15. The Debtors were guided by the factors established by relevant case law regarding the reasonableness of such settlements. These factors include:

- a) the probability of success in the litigation;
- b) the complexity, expense and likely duration of the litigation;
- c) the possibilities of collecting on any judgment which might be obtained;
- d) all other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise; and
- e) whether the proposed compromise is fair and equitable to the Debtors, their creditors, and other parties in interest.

See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (hereinafter referred to as “TMT”); see also Martin, 91 F. 3d at 393.

16. Basic to the process of evaluating proposed settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” TMT, 390 U.S. at 425. The TMT rule does not require the Court to hold a full evidentiary hearing before a compromise can be approved, rather, the Court’s obligation is “to canvass the issues and see whether the settlement ‘falls below the lowest point in a range of reasonableness.’” 10 Collier on Bankruptcy, ¶ 9019.2, 9019-4 (15th ed.) (quoting In re Drexel Lambert Group, Inc., 134 B.R. 493 (Bankr. S.D.N.Y. 1991)); see also, Cosoff v. Rodman (In re W.T. Grant Co), 699 F.2d 599, 608 (2d Cir. 1983), cert, denied, 464 U.S. 822 (1983).

17. Applying these standards, the Debtors believe that the Stipulation and the settlement embodied therein are fair and equitable. First, the Stipulation resolves any potential claims or issues which Textron could bring or assert against the Parties or with respect to the Sale or the Textron Collateral. Second, the Stipulation provides additional value to Textron without compromising the amounts payable by the Buyer to the Debtors for the non-Textron assets. Third, the Stipulation was negotiated in good faith and at arms-length among the Parties. Accordingly, the Debtors, in their business judgment, believe that entering into the Stipulation is in their best interests and in the best interests of their estates and creditors.

NOTICE

18. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Official Committee of Unsecured Creditors, (c) Textron Financial Corporation; (d) counsel for the Buyer and (e) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

NO PRIOR REQUEST

19. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an order substantially in the form attached hereto granting the relief requested herein and such other and further relief as is just and proper.

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Dated: August 18, 2009

BLANK ROME LLP

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