

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

-----X
In re: : Chapter 11
: Case No. 09-11960 (BLS)
ALSET OWNERS, LLC, et al., : Jointly Administered
:
Debtors. : **Objection Deadline: April 12, 2010 at 4:00 p.m.**
-----X **Hearing Date: April 19, 2010 at 10:00 a.m.**

**MOTION PURSUANT 11 U.S.C. §105(a) AND RULE 9019 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING
STIPULATION BETWEEN THE LIQUIDATION TRUST AND
CHECKERCO, INC. IN CONNECTION WITH THE TAX ESCROW ISSUE**

The Liquidation Trust of Alset Owners, LLC, et al. (the "Liquidation Trust"), as successor in interest to the above captioned debtors (the "Debtors"), by and through its undersigned counsel, hereby moves this Court, pursuant to sections 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 "Federal Rules") approving the Stipulation and Settlement Regarding the Tax Escrow Issue (the "Stipulation")¹ with Checkerco, Inc. (together with certain of its relevant affiliates, the "Buyer", and together with the Liquidation Trust, the "Parties") in the above-referenced chapter 11 cases (the "Cases"). In support hereof, the Liquidation Trust respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Settlement.

Background

2. On June 5, 2009 (the "Petition Date"), each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Prior to the Petition Date, the Debtors were the largest franchisee of Checkers Drive-In Restaurants, Inc., the national Franchisor of the Rally's and Checkers' Restaurant chains.

3. On June 24, 2009, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee").

4. On February 22, 2010, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Joint Chapter 11 Plan of Liquidation of the Debtors and Debtors-in-Possession, dated December 2, 2009 (the "Plan").

5. On March 9, 2010, pursuant to the Confirmation Order, the Plan became effective in accordance with its terms (the "Effective Date").

6. Pursuant to the terms of the Plan, on or prior to the Effective Date, the Liquidation Trust Agreement was executed, thereby creating the Liquidation Trust and appointing InvoTex Group as Liquidation Trustee of the Liquidation Trust. On the Effective Date, among other things, all assets of the Debtors became assets of the Liquidation Trust and the Liquidation Trust became the successor in interest to the Debtors as more fully described in the Plan.

7. As the successor in interest to the Debtors, the Liquidation Trust, through the Liquidation Trustee, has full authority to enter into the Stipulation and Settlement.

8. Prior to the Petition Date, the Debtors began exploring strategic alternatives for addressing their financial and operational challenges as they were no longer able to operate at margins sufficient to cover expenses at many of their restaurants and struggled with liquidity and working capital demands

9. 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") on the terms set forth in the Asset Purchase Agreement dated as of June 5, 2009 (as amended, the "Asset Purchase Agreement").

10. On July 7, 2009, the Court entered an order approving the bidding procedures and scheduled an auction for August 24, 2009. Praetorian Group, the Debtors sales advisor, marketed the Debtors' assets for sale to prospective purchasers. However, no qualified competing bids were received by the Debtors by the bid deadline and therefore no auction was held. The Debtors' assets were sold to the Buyer as the highest and best bidder.

11. On August 31, 2009 the Sale closed and the Court entered an order authorizing the sale of assets to Buyer pursuant to the terms of the Asset Purchase Agreement.

The Tax Issue and the Stipulation and Settlement²

12. In connection with the closing of the Sale to the Buyer, a disagreement arose with respect to the payment of certain taxes due under leases being assumed by the Buyer pursuant to the Asset Purchase Agreement (the "Tax Issue"). To allow the Sale to close, an escrow arrangement was entered into pursuant to which Blank Rome LLP, Debtors' counsel, would serve as escrow agent, and \$185,372.00 (the "Escrow Funds") of the purchase price was paid over to the escrow agent to be held in escrow pending a resolution of the Tax Issue.

13. Following good faith negotiations and in an effort to avoid the expense and uncertainty of litigation, the Parties have reached an agreement with respect to the Tax Issue as further described in the Stipulation and Settlement.³

² The terms of the Settlement Agreement contained herein are for summary purposes only and all parties are directed to the Stipulation and Settlement for the full terms thereof. To the extent that the description contained herein and the Stipulation and Settlement conflict, the Stipulation and Settlement shall control.

³ A fully executed Stipulation and Settlement will be submitted to the Court prior to the hearing.

14. Subject to the Court's approval of the Stipulation and Settlement between the Parties (the "Approval Date"), the Escrow Funds shall be released as follows: \$150,000 shall be paid to the Liquidation Trust and \$35,372 of the Escrow Funds shall be paid to the Buyer, with any accrued interest thereon to be paid to the Liquidation Trust and the Buyer on a proportionate basis.

15. Additionally, the Liquidation Trust agrees to accept sole responsibility for paying the cost of all goods and services delivered to the Debtors prior to the closing of the Sale with respect to signage and equipment (the "Pre-Closing Purchases").

16. Upon the Approval Date, except as otherwise expressly provided in the Stipulation, the Parties agree to a mutual release of all claims in connection with the Tax Issue, the Escrow Funds and the Pre-Closing Purchases.

Relief Requested

17. By this Motion, the Debtors respectfully request that the Court approve the Stipulation and Settlement annexed to the proposed order as Exhibit A.⁴

Basis for Relief Requested

18. 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 provisions of this title." Bankruptcy Rule 9019 grants the Court authority to approve settlements of claims and controversies after notice and a hearing.⁵ Under this authority, the Third Circuit has emphasized that "to minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" Myers v.

⁴ A fully executed Stipulation and Settlement will be submitted to the Court prior to the hearing.

⁵ 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."

Martin (In re Martin), 91 F. 3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy 9019.03[1] (15th ed. 1993)).

19. 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 Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting In re Louise’s, Inc., 211 B.R. 798, 801 (D. Del. 1997)). 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. Martin, 91 F.3d at 393. In striking this balance, the court should consider the following factors:

- (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.

Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425 (1968). See also, Martin, 91 F.3d at 393. 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 Trailer Ferry, 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 canvas 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).

20. The Stipulation and Settlement will provide finality to the sale of the Debtors' assets and a resolution of the Tax Issue without unpredictable or prolonged litigation. This finality will relieve the Liquidation Trust of further expenditures in connection with the Sale of the Debtors' assets. Moreover, entry into the Stipulation and Settlement will not dilute the recovery to the Debtors' creditors or adversely impact the estates in these cases. Accordingly, the Liquidation Trust, in its business judgment, believes that entering into the Stipulation and Settlement is in the best interests of the Debtors and their estates and creditors.

Notice

21. Notice of this Motion has been provided to the following parties: (a) the Office of the United States Trustee; (b) counsel to the Debtors; and (c) all parties requesting notice under Bankruptcy Rule 2002.

No Prior Request

22. No prior application for the relief requested herein has been made to this or any other court for this particular Stipulation and Settlement.

WHEREFORE, the Liquidation Trust respectfully requests that this Court enter an order, in the form attached hereto, granting the relief requested herein and such other and further relief as is just and proper.

Dated: March 29, 2010
Wilmington, Delaware

KLEHR HARRISON HARVEY
BRANZBURG LLP

By: /s/ Joanne B. Wills

Joanne B. Wills (DE Bar No. 2357)
Richard M. Beck (DE Bar No. 3370)
919 Market Street, Suite 1000
Wilmington, DE 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193
jwills@klehr.com
rbeck@klehr.com

*Counsel for the Liquidation Trust of Alset
Owners, LLC, et al.*