

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
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GULF PACKAGING, INC.,¹) Case No. 15-15249
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Debtor.) Hon. Pamela S. Hollis
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OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR’S APPLICATION FOR ORDER AUTHORIZING THE EMPLOYMENT OF UNIVERSITY MANAGEMENT ASSOCIATES & CONSULTANTS CORP. AS DEBTOR’S COLLECTION AGENT PURSUANT TO SECTIONS 327, 328 AND 504 OF THE BANKRUPTCY CODE AND RULE 2014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, EFFECTIVE AS OF AUGUST 7, 2015

The Official Committee of Unsecured Creditors (the “Committee”) of Gulf Packaging, Inc. (“GPI” or the “Debtor”), by and through its undersigned counsel, hereby submits this objection (the “Objection”) to the application (the “Application”) of Gulf Packaging, Inc. (the “Debtor” or “GPI”) for an order authorizing the employment of University Management Associates & Consultants Corp. as Debtor’s collection agent pursuant to sections 327, 328 and 504 of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, Effective as of August 7, 2015. In support of this Objection, the Committee states as follows:

BACKGROUND

The Application is completely unnecessary, harms the interests of the unsecured creditors of the estate, does not provide any value for the estate, potentially allows releases of valuable claims of the estate, allows for the destruction of the Debtor’s records, and only supports the interests of the secured lender FCC, LLC (“FCC”) and the Debtor’s insiders who guaranteed the debt owed to FCC.

This entire bankruptcy case has been run for the benefit of FCC, not the unsecured creditors. The Debtor has tried and fail to sell its inventory in a bulk auction under §363 of the Bankruptcy Code. The proceeds of the inventory that the Debtor has managed to sell have all gone directly to a lockbox controlled by FCC and swept by FCC to apply against its loan.

FCC has claimed throughout this case that it is over-secured and entitled to post-petition interest and fees, and the Debtor has waived its rights to assert §506(c) claims against FCC for all of the expenses incurred in liquidating and preserving FCC's collateral based on that representation. It is now clear that FCC is actually woefully under-secured.

The Application states that the Debtor "has approximately \$4 million of accounts receivable from customers, including certain of GPI's affiliates." In the beginning of the case, the Debtor scheduled its receivables at a value of \$7,923,535.11. During the course of the case, the Debtor has collected receivables and transferred the proceeds directly to FCC. The Debtor and FCC claim that FCC is still owed more than \$5 million. The \$4 million in receivables should be turned over to FCC and collected at FCC's cost. If FCC wants to settle for less than the full value of the receivables, then FCC should suffer the loss, not the unsecured creditors of the estate. There is simply no justification for causing the estate to bear the cost of liquidating FCC's collateral.

OBJECTION

The Committee has a general objection to hiring any collection agency at this late stage in this liquidation case, prior to a fair liquidation plan being quickly confirmed or conversion to Chapter 7. The Committee, moreover, has specific objections to the Application, including the potential for such collections to result in releases of potential defendants in causes of action belonging to the estate, the authority for University Management ("UM") to destroy the Debtor's

¹ The last four digits of the Debtor's tax identification number are 5030.

records, the exclusivity of the engagement, the lack of information about which claims UM will be charged with collecting, and the cost of collection compared to turning over \$4 million in receivables to FCC for credit against its loan balance.

Retention is Unnecessary

To date, the sole beneficiary of this case has been FCC and it is clear how the Application benefits FCC. However, nothing the Debtor has done has provided any value or source of recovery for the unsecured creditors of the estate and nothing in the Application demonstrates how the retention of UM *will benefit the estate*. In fact, the Application provides that UM will direct the customers to make payments directly to FCC through its lockbox. The Debtor then will pay UM its contingency fee later. Accordingly, the Debtor is paying a contingency fee to UM so that it can liquidate accounts receivable explicitly for the sole benefit FCC.

It is also noteworthy that UM has “provided accounts receivable evaluations on several of FCC’s clients” over the past four years. Rome Dec., Sch. 2. This statement raises the question of whether FCC dictated the Debtor’s retention of UM.

Since the Debtor has waived its right to charge FCC with the costs of collection of the receivables under §506(c), the estate is better off by the Debtor turning over the receivables to FCC at book value and forcing FCC to incur the costs of collection of the collateral securing its clearly under-secured claim.

Releases

The Application states that UM will handle the collection of approximately \$2.5 million of receivables. Typically, these types of collection agencies are allowed to settle claims and grant releases on the Debtor’s behalf. What is not clear is what authority will UM be given to settle claims, give discounts, and release the liability of the customers. What if those same creditors, affiliates, insiders, or other parties are potential defendants in fraudulent transfer,

preference actions, or other actions arising under Chapter 5 of the Bankruptcy Code? Will UM have authority to release those claims?

Destruction of Records

The most alarming provision of the Application and the accompanying contract of UM is the granting of authority of UM to “Dispose of documentation pertaining to the Accounts Receivable that it deems no longer required or necessary in the collection of the Accounts Receivable.” Application, p. 4 and Services Agreement, p. 1. The Committee has been requesting that the Debtor give it direct access to its computer records for months now and the Debtor has failed to provide that access. Now, it has filed an Application contemplating the destruction of its records when UM unilaterally “deems” the records no longer necessary. It is completely inappropriate considering that the Committee has not had the opportunity to review such records and determine whether they may be relevant or useful to any claims of the estate.

Exclusivity

It is possible that the potential defendants, especially the insiders and affiliates, are potential defendants in other claims of the estate. By granting UM the exclusive right to pursue the defendants, the Application may have the collateral effect of preventing a liquidating trustee, a Chapter 7 trustee, the Debtor, or the Committee from pursuing other claims against the same parties.

No Information on Claims

The Application does not identify which claims UM would be tasked with collecting, the amounts of those claims, the identity of the potential defendant, and the age of the claims. Indeed, footnote 3 of the Application discloses that the Debtor’s accounts receivable total \$4 million and include amounts owing from affiliates, but states UM “will handle collections on approximately \$2.5 million, which will exclude certain amounts owing from Affiliates and non-

Affiliates.” Application, n. 3. It is unclear from this statement whether UM will be liquidating accounts receivable owed from Affiliates. Given the circumstances of this case and the numerous related affiliates, the exact details regarding what accounts receivable would be liquidated by UM should be disclosed.

Costs of Collection

As stated above, FCC is not offering to compensate the estate for UM’s costs of collection and neither FCC nor the Debtor have explained why the estate is even continuing to collect receivables instead of turning the rights over to FCC, at its expense, especially after the failed §363 sale. The Debtor is no longer a going concern entity. It is not going to reorganize or restructure. It is liquidating and the estate has no equity interest in the receivables, as FCC’s collateral is under water.

CONCLUSION

The Debtor and FCC have indicated to the Committee that they intend to file a plan of reorganization which would treat FCC’s claim as fully secured, even though it is abundantly clear that the value of FCC’s collateral has always been substantially lower than what the Debtor and FCC said it was worth at the onset of the case. The attempted and actual sales of the Debtor’s assets have proven that FCC was and always has been under-secured and not entitled to post-petition interest or fees.

The only fathomable reason for the Application is that the Debtor and the insider guarantors desperately want the unsecured creditors of the estate to bear as much of the cost of collection of FCC’s collateral as possible so as to minimize FCC’s claim and the guarantor liability. There is no basis for the Application and certainly no benefit to the estate.

Dated: August 14, 2015

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF GULF PACKAGING, INC.**

By: /s/ Shelly A. DeRousse
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