

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
GULF PACKAGING, INC.,) Case No. 15-15249
)
Debtor.) Hon. Pamela S. Hollis
)
) Hearing Date: October 1, 2015 at 10:00 a.m.
)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on October 1, 2015 at 10:00 a.m., the undersigned shall appear before the Honorable Pamela S. Hollis in Courtroom 644, or whomever may be sitting in her place and stead, at the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, Illinois and will then and there present the *Motion of Official Committee of Unsecured Creditors to Convert Chapter 11 to Chapter 7 Bankruptcy Proceeding and Approval of Limited Notice* a copy of which is attached hereto and herewith served upon you.

Dated: September 4, 2015

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

By: /s/ Shelly A. DeRousse
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Shelly A DeRousse, an attorney, hereby certify that on September 4, 2015, I caused a true and correct copy of the foregoing *Notice of Motion and Motion of Official Committee of Unsecured Creditors to Convert Chapter 11 to Chapter 7 Bankruptcy Proceeding and Approval of Limited Notice*, to be filed with the Court and served upon all counsel of record via the Court's CM/ECF system, including the individuals set forth below.

/s/ Shelly A. DeRousse

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
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In re:) Chapter 11
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GULF PACKAGING, INC.,¹) Case No. 15-15249
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**MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
CONVERT CHAPTER 11 TO CHAPTER 7 AND APPROVAL OF LIMITED NOTICE**

The Official Committee of Unsecured Creditors (the “Committee”) of Gulf Packaging, Inc. (“GPI” or the “Debtor”), by and through its undersigned counsel, hereby makes this Motion to Convert this Chapter 11 Case to a Chapter 7 Proceeding and Approval of Limited Notice, and in support, the Committee states as follows:

BACKGROUND

1. On April 29, 2015, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. At the time of filing, the Debtor had secured debt of more than \$9 million owed to FCC, LLC (“FCC”). After filing the case, the Debtor has been slowly liquidating its inventory and collecting receivables, for the benefit of the secured creditor. The Debtor has not brought in any unencumbered funds or other assets for the benefit of the unsecured creditors and, based on representations made by both the Debtor and FCC and reports circulated by the Debtor, FCC’s claim appears to be approximately \$2 million underwater after the value of the collateral is netted out. The Debtor and FCC claim that FCC is still owed more than \$5 million.

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

2. On May 26, 2015, the Court entered an order approving the Debtor's employment of Equity Partners HG LLC ("*Equity*") to conduct a sale of substantially all of the Debtor's assets pursuant to §363 of the Bankruptcy Code. Equity vigorously marketed the assets to liquidators, as well as other companies in the packaging industry. On July 29, 2015, the Debtor conducted a competitive §363 sale, at which no bidder was able to make a bid satisfactory to FCC. The highest bid was less than \$300,000 for assets which secure an alleged remaining claim of \$5 million.

3. The proceeds of the inventory that the Debtor has managed to sell and the receivables which have been collected 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.

4. On June 2, 2015, the Court entered a Final Order Granting Adequate Protection in favor of FCC, pursuant to which FCC allowed the use of its cash collateral (the "*Carveout*") to fund this Chapter 11 case. The authority to use cash collateral has since terminated.

5. FCC is taking the position that it has a superpriority claim over unsecured creditors in an amount of at least the cash collateral that was and currently is still being spent by the Debtor in the Chapter 11 case. FCC intends to recover its superpriority claim through the estate's pursuit of general unsecured trade creditors for recovery of alleged preferential transfers under §547 of the Bankruptcy Code. FCC does not otherwise have a security interest in Chapter 5 causes of action. Therefore, the longer this case remains in Chapter 11, the greater FCC's alleged superpriority claim will grow, allowing this already administratively insolvent case to

sink further into a hole. To be clear, unsecured creditors are harmed every day this case remains in Chapter 11, because their chances of recovery are rapidly depleting via FCC's asserted § 507(b) argument, while their exposure to being sued increases. If preference claims are pursued, it should be for the redistribution of those funds to unsecured creditors, not to fund a secured lender's collection and liquidation of its collateral, which is exactly what the Debtor and FCC have planned for this case.

6. There is no chance of reorganization. The best that can happen is the Debtor is able to confirm a liquidating plan, and this Court has previously stated that it will not confirm a plan that is not supported by the Debtor, FCC *and the Committee*. Further, any plan could not be confirmed under the Bankruptcy Code without the consent of the constituents of the Committee - the unsecured creditors. This case belongs in the hands of a Chapter 7 trustee, who will liquidate the assets and pursue claims for the benefit of the estate, not the secured creditor.

BASIS FOR RELIEF

7. Section 1112(b) of the Bankruptcy Code states that:

On request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of the creditors and the estate, for cause unless the court determines that appointment under section 1104(a) of a trustee or an examiner is in the best interests of the creditors of the estate.

11 U.S.C. §1112(b)(1).

8. The Bankruptcy Code lists specific definitions of "cause," including "a substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. §1112(b)(4).

9. Cause to convert this case to Chapter 7 exists for several reasons. First, the longer this case stays in Chapter 11, the longer FCC's alleged superpriority §507(b) claim grows,

which, if allowed, would eat away at the only potential source of recovery for unsecured creditors- Chapter 5 actions. The value of the estate is rapidly decreasing.

10. Second, the Debtor admittedly will never file a plan which reorganizes its business, as the Debtor's business was defunct and in liquidation mode at the time of filing the case. The Debtor could not even successfully sell its fully encumbered assets in a §363 sale, and the authority to use cash collateral has terminated. The Debtor intends to file a liquidating plan, but the parties have yet to reach an agreement on plan terms, and the Court has previously stated that it will not confirm unless the major parties are in agreement.

11. Finally, substantial claims against insiders exist. For example, the Debtor's Statement of Financial Affairs indicates that insiders received over \$5 million in transfers within the one year period before the bankruptcy was filed. Many of those insiders are in control of the Debtor still and conversion of the case to Chapter 7 would greatly benefit the creditors of the estate by resting the responsibility of pursuing those claims with a neutral bankruptcy trustee.

REQUEST FOR LIMITED NOTICE

12. Bankruptcy Rule 2002(a)(4) requires twenty one days' notice of requests for conversion. Given the number of creditors in this proceeding and the fact that the Committee – which represents the interests of all unsecured creditors – is seeking conversion, however, the Committee submits that cause exists to limit notice only to those parties that have entered appearances and requested notice in this case.

CONCLUSION

13. The unsecured creditors are not benefitting from this Chapter 11 case and, in fact, continue to be harmed the longer the case proceeds in Chapter 11, as the value of the estate is diminishing for the benefit of FCC. The creditors and the estate will be much better off if the case is converted to Chapter 7.

WHEREFORE, the Committee respectfully requests that this Court enter an order (1) converting the case to Chapter 7 of the Bankruptcy Code; (2) approving limited notice; and (3) granting such other relief as is just and appropriate.

Dated: September 4, 2015

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

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One of Its Attorneys

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