

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
GULF PACKAGING, INC.,) Case No. 15-15249
)
Debtor.) Honorable Pamela S. Hollis
)
) **Hearing Date: October 20, 2015**
) **Hearing Time: 10:00 a.m.**
) **Court Room: 644**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **October 20, 2015 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, Courtroom No. 644, or whomever may be sitting in her place and stead, and then and there present the **Unopposed Motion to Approve Joint Stipulation Lifting the Automatic Stay as to Tiedemann Globe, Inc. to Effect Setoff**, a copy of which is attached hereto and hereby served upon you.

Dated: October 6, 2015

Respectfully submitted,

GULF PACKAGING, INC.

By: /s/ Joseph D. Frank
One of its attorneys

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)	
In re:)	Chapter 11
)	
GULF PACKAGING, INC.)	Case No. 15-15249 (PSH)
)	
Debtor.)	
)	

UNOPPOSED MOTION TO APPROVE JOINT STIPULATION LIFTING THE AUTOMATIC STAY AS TO TIEDEMANN GLOBE, INC. TO EFFECT SETOFF

Gulf Packaging, Inc., the debtor in the above-captioned case, by its undersigned attorneys hereby files this *Unopposed Motion to Approve Joint Stipulation Lifting the Automatic Stay as to Tiedemann Globe, Inc. to Effect Setoff* (this “**Motion**”) and respectfully states as follows.

RELIEF REQUESTED

Through this Motion, Gulf Packaging requests that the Court enter an order approving the Stipulation for Relief From the Automatic Stay (the “**Stipulation**”), a true and correct copy of which is attached hereto as Exhibit A, entered into between Gulf Packaging, Inc. (“**Gulf Packaging**”) and Tiedemann Globe, Inc. (“**Tiedemann Globe**”).

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157(b) and 1334 and 11 U.S.C. §362(d)(1). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for relief are 11 U.S.C. §362(d), Federal R. Bank. P. (the “**Bankruptcy Rules**”) 4001. This is a core proceeding under 28 U.S.C. §157(b)(2).

BACKGROUND AND SUMMARY OF STIPULATION

From October 6, 2014 March 2, 2015 Tiedemann Globe supplied wiping rags to Gulf Packaging and issued invoices in the total amount of \$3,216.90 which Gulf Packaging has not paid. From March 10, 2015 through April 27, 2015 Gulf Packaging invoiced Tiedemann Globe \$3,504.00 for poly strapping provided to Tiedemann Globe and from May 4, 2015 through May 23, 2015 Gulf Packaging invoiced Tiedemann Globe \$1,760.00 for poly strapping. Tiedemann Globe has not paid these invoices. On April 29, 2015 Gulf Packaging filed its voluntary chapter 11 petition with this Court. On August 3, 2015 Tiedemann Globe notified Gulf Packaging's attorneys of its intent to effect a setoff and requested that Gulf Packaging consent to relief from the automatic stay. Through the Stipulation, Gulf Packaging and Tiedemann Globe agree that:

- (a) the automatic stay imposed by 11 U.S.C. §362 is terminated as to Tiedemann Globe and Tiedemann Globe may setoff the amounts owed by Gulf Packaging of \$3,216.90 against the amounts Tiedemann Globe owes Gulf Packaging of \$5,264.00.
- (b) upon the Court's approval of the Joint Stipulation, Tiedemann Globe shall immediately pay to Gulf Packaging the remaining amount it owes Gulf Packaging after taking into account the setoff, which is \$2,047.10; and
- (c) subject to Court approval, relief from the automatic stay shall be immediate, and any stay under Bankruptcy Rule 4001(a)(3) is waived.

BASIS FOR RELIEF

Under Bankruptcy Rule 4001, the Court may enter an order approving an agreement for relief from the automatic stay without a hearing if no objection is filed, or after a hearing if a timely objection is filed. *See* Fed. R. Bankr. P. 4001(d)(3). Pursuant to 11 U.S.C. §362(d) a court "shall grant relief from the stay provided under subsection (a) of this section, such as by

terminating, annulling, modifying, or conditioning such stay ... for cause.” 11 U.S.C. §362(d)(1). A valid right of setoff is “a prima facie showing of ‘cause’ for relief from stay...” *United States v. Orlinski (In re Orlinski)*, 140 B.R. 600 603 (Bankr. S.D. Ga. 1991). Absent “compelling circumstances,” once a party establishes a right of setoff, that party has also demonstrated cause for lifting the automatic stay. *Bohack Corp. v. Borden, Inc.*, 599 F.2d 1160 (2d Cir. 1979). Therefore, a valid, nonbankruptcy setoff right by itself constitutes cause for lifting the automatic stay under Section 362(d)(1).

Tiedemann Globe has a valid right of setoff against Gulf Packaging. 11 U.S.C. §553 states in relevant part:

“(a) Except as otherwise provided in this section and sections 362 and 363 of this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before commencement of the case”.

To offset a debt pursuant to § 553(a), the creditor must show that 1) the debtor owes a debt to the creditor which arose prior to the commencement of the bankruptcy case; 2) the debtor holds a claim against the creditor which arose prior to the commencement of the case; and 3) the debt and the claim are mutual. *In re Pyramid Industries, Inc.*, 170 B.R. 974, 982 (1994). All of the required elements of § 553(a) are present in the instant case. First, as of the commencement of the case Gulf Packaging owed Tiedemann Globe \$3,216.90 as evidenced by the debtor’s bankruptcy schedules. Next, as of the commencement of the case, Gulf Packaging held a claim against Tiedemann Globe in the amount of \$3,504.00. Accordingly, the first two elements of §553(a) have been met.

The third element of § 553(a), the debt and the claim are mutual, is also present in the instant case. In order for debts to be mutual they must be in the same right and between the same

parties, standing in the same capacity. *In re NTG Industries, Inc.*, 103 B.R. 195, 197 (1989). The parties involved in the two transactions must be identical. *Pyramid*, 170 B.R. at 982. In this case, Tiedemann Globe owes Gulf Packaging and Gulf Packaging owes Tiedemann Globe, therefore, these obligations are owed between the same parties. Moreover, mutuality exists with respect to the debts because the parties owe those debts to another in the same capacity. Accordingly, the debts are mutual and all of the elements necessary to offset a debt pursuant to §553(a) are present. Therefore, Tiedemann Globe possesses a valid right of setoff against Gulf Packaging which is cause for relief from the stay.

Gulf Packaging has conferred with Tiedemann Globe about this Motion and Tiedemann Globe does not oppose the same.

WHEREFORE, Gulf Packaging respectfully requests that the Court enter an order (a) approving the Stipulation, (b) terminating the automatic stay as to Tiedemann Globe, (c) waiving the stay otherwise imposed by Bankruptcy Rule 4001, and (d) granting such other and further relief as the Court deems justified in law or equity.

Dated: October 6, 2015

Respectfully submitted,

GULF PACKAGING, INC.

/s/ Joseph D. Frank

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