IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS
(KANSAS CITY)

In re:	)	
JOHN Q. HAMMONS FALL, 2006, LLC, et al.,	)	**Case No. 16-21142-RDB**
	)	***jointly administered***
	)	
Debtors.[1]	)	**Chapter 11**
	)	

JOINT MOTION FOR AUTHORITY TO ENTER INTO CLAIM ALLOWANCE SETTLEMENT AGREEMENT WITH UBS SECURITIES, LLC

JD Holdings, L.L.C. ("JDH") and the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated ("JQH Trust"), hereby submit this joint motion (the "Motion") for entry of an order pursuant to Sections 105(a) and 502(b) of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") approving the terms of the claim allowance settlement agreement

[1]The Debtors in this case are: ACLOST, LLC, Bricktown Residence Catering Co., Inc., Chateau Catering Co., Inc., Chateau Lake, LLC, City Centre Hotel Corp., Civic Center Redevelopment Corp., Concord Golf Catering Co., Inc., Concord Hotel Catering Co., Inc., East Peoria Catering Co., Inc., Fort Smith Catering Co., Inc., Franklin/Crescent Catering Co., Inc., Glendale Coyotes Catering Co., Inc., Glendale Coyotes Hotel Catering Co., Inc., Hammons, Inc., Hammons of Arkansas, LLC, Hammons of Colorado, LLC, Hammons of Franklin, LLC, Hammons of Frisco, LLC, Hammons of Huntsville, LLC, Hammons of Lincoln, LLC, Hammons of New Mexico, LLC, Hammons of Oklahoma City, LLC, Hammons of Richardson, LLC, Hammons of Rogers, Inc., Hammons of Sioux Falls, LLC, Hammons of South Carolina, LLC, Hammons of Tulsa, LLC, Hampton Catering Co., Inc., Hot Springs Catering Co., Inc., Huntsville Catering, LLC, International Catering Co., Inc., John Q. Hammons 2015 Loan Holdings, LLC, John Q. Hammons Center, LLC, John Q. Hammons Fall 2006, LLC, John Q. Hammons Hotels Development, LLC, John Q. Hammons Hotels Management I Corporation, John Q. Hammons Hotels Management II, LP, John Q. Hammons Hotels Management, LLC, Joplin Residence Catering Co., Inc., JQH – Allen Development, LLC, JQH – Concord Development, LLC, JQH – East Peoria Development, LLC, JQH - Ft. Smith Development, LLC, JQH – Glendale AZ Development, LLC, JQH - Kansas City Development, LLC, JQH - La Vista Conference Center Development, LLC, JQH - La Vista CY Development, LLC, JQH - La Vista III Development, LLC, JQH - Lake of the Ozarks Development, LLC , JQH – Murfreesboro Development, LLC, JQH – Normal Development, LLC, JQH – Norman Development, LLC, JQH – Oklahoma City Bricktown Development, LLC, JQH – Olathe Development, LLC, JQH – Pleasant Grove Development, LLC, JQH – Rogers Convention Center Development, LLC, JQH – San Marcos Development, LLC, Junction City Catering Co., Inc., KC Residence Catering Co., Inc., La Vista CY Catering Co., Inc., La Vista ES Catering Co., Inc., Lincoln P Street Catering Co., Inc., Loveland Catering Co., Inc., Manzano Catering Co., Inc., Murfreesboro Catering Co., Inc., Normal Catering Co., Inc., OKC Courtyard Catering Co., Inc., R-2 Operating Co., Inc., Revocable Trust of John Q. Hammons Dated December 28, 1989 as Amended and Restated, Richardson Hammons, LP, Rogers ES Catering Co., Inc., SGF – Courtyard Catering Co., Inc., Sioux Falls Convention/Arena Catering Co., Inc., St Charles Catering Co., Inc., Tulsa/169 Catering Co., Inc., and U.P. Catering Co., Inc.

attached hereto as **Exhibit A** (the "Settlement Agreement"). In support of the Motion, JDH and the JQH Trust represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion under 28 U.S.C. § 1334(a) and (b). This is a core proceeding in that this Motion affects the administration of these bankruptcy estates. 28 U.S.C. §§ 157(b)(1) & (2)(A). Venue is proper in this Court. 28 U.S.C. § 1409(a).

2. The legal predicates for the relief requested herein are Sections 105 and 502 of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

3. On June 26, 2016, the JQH Trust, together with 71 affiliated entities, and on July 5, 2018, an additional four affiliated entities (collectively, the "Debtors"), commenced voluntary cases pursuant to chapter 11 of the Bankruptcy Code.

4. On September 29, 2016, the Debtors filed an application pursuant to Sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Bankruptcy Rule 2014.1, for an order authorizing Debtors to retain and employ UBS to provide financial advisory services [Doc. 528] (the "Application") pursuant to the terms of that certain letter agreement dated September 14, 2016 (the "Letter Agreement").

5. On October 19, 2016, the Court granted the Application [Doc. 596].

6. On March 30, 2018, JDH filed its Modified Amended Joint and Consolidated Chapter 11 Plans of Reorganization for All Debtors Filed by JD Holdings, L.L.C. dated March 30, 2018 [Doc. 1946] (the "Plans").

7. On April 4, 2018, UBS filed an application for payment of transaction fees and related relief [Doc. 1966] (the "First Fee Application").

8. On April 25, 2018, JDH filed an objection to the First Fee Application [Doc. 2077], disputing the amount of the fees claimed by UBS under the Letter Agreement (the "Fee Dispute").

9. On May 11, 2018, this Court entered an order confirming the Plans [Doc. 2188] (the "Confirmation Order").

10. On July 2, 2018, UBS filed a supplemental and final application for compensation for professional services rendered and reimbursement of expenses as investment banker and financial advisor to the Debtors from September 14, 2016 through May 17, 2018 [Doc. 2387] (the "Final Fee Application", and together with the First Fee Application, the "Fee Application").

11. On July 17, 2018, JDH objected to the Final Fee Application [Doc. 2424].

12. On March 8, 2019, after various motions by UBS and JDH and a hearing before the Court on August 20, 2018, the Court issued a Memorandum Opinion and Order [Doc. 2640] adjudicating certain matters relating to the Fee Dispute, but directing the parties to confer to attempt to resolve other matters relating to the Fee Dispute, including, without limitation, the computation of the Sale Transaction Fee (the "Open Matters").

13. On April 13, 2020, the Court entered a Scheduling Order that included a date for an evidentiary hearing (the "Evidentiary Hearing") on the Open Matters [Doc. 2856] (the "Scheduling Order").

14. JDH and UBS, without admitting any deficiencies in their respective positions and to avoid the burden and expense of protracted litigation, have agreed to a compromise to resolve fully and finally all disputes related to the Fee Application, the Fee Dispute, the Open Matters, and all other pending or potential claims or causes of actions arising or accruing before the date of the Settlement Agreement between JDH, JQH Trust, or any other Debtors, on the one hand, and UBS, on the other hand (collectively, the "Claims") on the terms set forth in the Settlement Agreement.

15. The Settlement Agreement, which is attached as Exhibit A hereto, contains the following material terms:[2]

(a) JDH shall pay UBS the amount of Eight Million Six Hundred Fifty Thousand Dollars ($8,650,000.00) on the Payment Date (as defined in the Settlement Agreement) in full satisfaction of all amounts to be paid or payable under the Letter Agreement, including, without limitation, the Sale Transaction Fee, the Restructuring Transaction Fee, and all other fees, reimbursements, and other amounts owed by the Debtors or JDH to UBS for the services provided by UBS to the Debtors. This amount shall be in addition to all Prior Payments (as defined in the Settlement Agreement) to UBS, and UBS shall have no obligation to return any such Prior Payments.

(b) The parties shall provide mutual releases, as set forth in the Settlement Agreement; and

(c) The Scheduling Order shall be vacated and the Evidentiary Hearing cancelled upon the Court's approval of the Settlement Agreement.

RELIEF REQUESTED

16. JDH and the JQH Trust request that the Court enter an order pursuant to Bankruptcy Code Sections 105(a) and 502(b) and Bankruptcy Rule 9019 approving the terms of the Settlement Agreement.

17. Bankruptcy Code section 502(b), which permits the Court to determine the allowed amount of claims, authorizes the Court to grant the relief requested herein.

18. In addition, Bankruptcy Code section 105(a) authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

[2] The Settlement Agreement shall control to the extent there is a conflict between anything in this Motion and any term of the Settlement Agreement.

19. Finally, Bankruptcy Rule 9019 vests the Court with broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy case, providing that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." "The purpose behind compromises 'is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.'" *In re Southern Medical Arts Cos., Inc.*, 343 B.R. 250, 255 (B.A.P. 10th Cir. 2006) (citation omitted).

20. In *Southern Medical Arts*, the BAP established the following four-prong test for evaluating compromises: "(1) the chance of success on the litigation on the merits; (2) possible problems in collecting the judgment; (3) the expense and complexity of the litigation; and (4) the interest of the creditors." *Id.*; *see also In re Kopexa Realty Venture Co.*, 213 B.R. 1020 (B.A.P. 10th Cir. 1997). A bankruptcy court's decision to approve a settlement must be an informed one based upon objective evaluation of developed facts. *Reiss v. Hagmann*, 881 F.2d. 890, 892 (10th Cir. 1989).

21. In reviewing a proposed settlement, the bankruptcy court considers the likelihood of success and the expected delay caused by the litigation and should not substitute its judgment for that of the debtor, but instead should canvass the issues to determine that the settlement does not fall below the lowest point in the range of reasonableness. *In re W.T. Grant Co.*, 699 F.2d 599, 608 (5th Cir. 1983); *In re Apex Oil Co.*, 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988) (holding that the standard for approval of a compromise is whether the proposed compromise is "fair and equitable" and in the best interests of the estate and that the debtor's judgment in recommending a settlement should not be substituted as long as the settlement is reasonable). The decision of

whether to approve a proposed settlement is within the sound discretion of the Bankruptcy Court. *In re Flight Transportation Corporation Securities Litigation*, 730 F.2d 1128, 1136 (8th Cir. 1984). Compromises are favored in bankruptcy. *Southern Medical Arts*, 343 B.R. at 255.

22. JDH and the JQH Trust believe that the Settlement Agreement achieves value maximization for the benefit of creditors and the estates. As to the *Southern Medical Arts* factors, JDH, the JQH Trust, and UBS reached this compromise after evaluating the possibility that UBS would prevail on all Claims. In addition, continuing the litigation would have been very costly, particularly given the complexity of the legal and factual issues presented by the litigation. The compromise in the Settlement Agreement represents a potential savings to JDH and the bankruptcy estates if UBS were to prevail on the Claims.

23. Importantly, the Settlement Agreement eliminates significant uncertainty between JDH and the Debtors on the one hand, UBS on the other hand.

CONCLUSION

For the foregoing reasons, JDH and the JQH Trust request that the Court enter an order pursuant to Sections 105(a) and 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019: (i) approving the terms of the Settlement Agreement; (ii) authorizing the intended compromise of claims set forth therein; (iii) vacating the Scheduling Order and cancelling the Evidentiary Hearing; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: May 21, 2020

Respectfully Submitted,

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