

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

In re: KIKO USA, Inc., <div style="text-align: right;">Debtor.¹</div>)))))))	Chapter 11 Case No. 18-10069 (MFW) Hearing Date: July 24, 2018 at 10:30 a.m. Objection Deadline: June 29, 2018 at 4:00 p.m.
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**MOTION OF ORDER APPROVING STIPULATION BETWEEN DEBTOR AND
SIMON PROPERTY GROUP, INC. (I) DISALLOWING CLAIM NO. 14;
(II) WITHDRAWING CLAIM NO. 19; (III) REDUCING AND ALLOWING
CLAIM NOS. 13, 15, AND 17; AND (IV) RECHARACTERIZING AND
ALLOWING CLAIM NOS. 16, 18 AND 77**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned counsel, hereby files this motion (the “Motion”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101—1532 (the “Bankruptcy Code”), and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the entry of an order (the “Settlement Order”), substantially in the form attached hereto as **Exhibit A**, approving a stipulation (the “Stipulation”)² by and between the Debtor and Simon Property Group, Inc. (“Simon,” and together with the Debtor, the “Parties”) attached to the Settlement Order as Exhibit 1. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within

¹ The last four digits of the Debtor’s federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Stipulation.

the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein is sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

Background

3. On January 11, 2018 (the “Petition Date”), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in this chapter 11 case, and no statutory committees have been appointed or designated.

4. The Debtor is a retailer of cosmetics and a wholly-owned subsidiary of KIKO S.p.A., an Italian corporation. The Debtor has faced a challenging commercial environment over the past several years brought on by increased competition and the shift away from shopping at brick-and-mortar stores, especially in shopping malls, where the Debtor maintained a significant presence at the outset of this Chapter 11 Case.

5. Further details about the Debtor and its business and the above-captioned Chapter 11 Case are set forth in greater detail in the *Amended Declaration of Frank Furlan in Support of Chapter 11 Petition and Requests for First Day Motions* [D.I. 14], which is incorporated by reference herein.

6. On April 4, 2018, the Debtor filed its proposed plan of reorganization (the “Plan”) [D.I. 196] and disclosure statement (the “Disclosure Statement”) [D.I. 197].

7. By order dated May 9, 2018, the Court approved the Debtor's Disclosure Statement. A hearing on confirmation of the Debtor's proposed Plan is scheduled for June 18, 2018.

8. By order dated April 19, 2018 [D.I. 217], the Court authorized the Debtor to assume, pursuant to section 365 of the Bankruptcy Code, its non-residential real property lease with Sunrise Mills (MLP), Limited Partnership for property located at Sawgrass Millis in Sunrise, Florida. The Debtor has cured, or will cure, any amounts required under section 365(b) of the Bankruptcy Code.

9. On February 15, 2018, the Bankruptcy Court entered an order (the "Bar Date Order") setting March 26, 2018 at 4:00 p.m. (prevailing Eastern Time) as the deadline for filing proofs of claim against the Debtor other than claims of Governmental Units, and July 10, 2018 at 4:00 p.m. (prevailing Eastern Time) as the deadline for filing claims by Governmental Units (collectively, the "Bar Date").

10. The Bar Date does not apply to, *inter alia*, claims arising from the rejection of non-residential real property leases after the Bar Date, in which case, the applicable bar date is controlled by provisions of the Plan and orders of the Bankruptcy Court authorizing the rejection of contracts or leases.

11. Simon, as authorized agent for each of the claimants identified below, timely filed the following proofs of claim (collectively, the "Disputed Claims"):

Claim No.	Claimant	General Unsecured Claim Amount	Priority Claim Amount
13	Mall at Potomac Mills, LLC	\$106,261.60	\$100.00
14	Rockaway Center Associates	\$169,115.16	\$100.00
15	Simon Property Group (TEXAS), L.P.	\$372,110.97	\$100.00

Claim No.	Claimant	General Unsecured Claim Amount	Priority Claim Amount
16	Fashion Centre Mall, LLC	\$303,929.55	\$100.00
17	Del Amo Fashion Center Operating Company, L.L.C.	\$221,893.05	\$100.00
18	Newport Centre, LLC	\$215,298.33	\$623.35
19	Sunrise Mills (MLP) Limited Partnership	\$219.40	\$100.00
77 (Amending Claim Number 14)	Rockaway Center Associates	\$170,031.42	\$1,016.26

12. The Debtor raised certain informal objections to the Disputed Claims. Specifically, the Debtor objected to the priority claims included in the Disputed Claims and asserted that many of the Disputed Claims were overstated, as Simon failed to account for the application of certain letter of credit proceeds in connection with the Disputed Claims. In the case of Claim No. 19, the Debtor asserted that such claim should be disallowed as the lease that was the subject of Claim No. 19 was assumed and any appropriate claims under section 365(b) of the Bankruptcy Claim have been, or will be, paid. Finally, the Debtor informally objected to Claim No. 14 as amended by Claim No. 77.

13. Following good faith negotiations and an exchange of information, the Parties agreed to resolve the Debtor's informal objections to the Disputed Claims pursuant to the terms of the Stipulation.

14. Pursuant to the Stipulation, Claim No. 19 is being withdrawn, Claim No. 14 is being disallowed as duplicative of Claim No. 77 and the remaining Disputed Claims are being allowed or reduced and allowed as general unsecured claims only.

Request for Relief

15. By this Motion, the Debtor seeks Court approval of the Stipulation.

Basis for Relief Requested

16. Bankruptcy Rule 9019(a) provides, in relevant part, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “[T]he authority to approve a compromise settlement is within the sound discretion of the bankruptcy court.” E.g., In re Key3Media Group, Inc., 336 B.R. 87, 92 (Bankr. D. Del. 2005). The standard for approval of a proposed compromise is well established – a court should approve a compromise where it “is fair, reasonable, and in the interest of the estate.” In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting In re Louise’s, Inc., 211 B.R. 798, 801 (D. Del. 1997)); see Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. 1996).

17. When considering the best interest of the estate, the court must “balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” In re Martin, 91 F.3d at 393. In striking this balance, the court should consider: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of creditors. Id.

18. The court does not have to be convinced that the settlement is the best possible compromise; rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities. In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). A court will normally accept the judgment of the movant as long as a legitimate business justification exists. E.g., Martin, 91 F.3d at 395.

19. Applying these principles to the present case, the Stipulation easily satisfies the Martin factors set forth above. First, because the Parties are in agreement as to the allowed

amounts of the Disputed Claims, there is no need to litigate the claims further or expend additional amounts to resolve the claims. Indeed, the Debtor has fully analyzed the Disputed Claims and confirmed that the proposed allowed amounts of such claims satisfy the requirements of section 502 of the Bankruptcy Code and/or are otherwise consistent with the Debtor's books and records.

20. The Debtor believes that the Stipulation reflects the most efficient means of resolving the Debtor's informal objections to the Disputed Claims and serves to benefit other creditors and parties in interest by enabling the Debtor to finalize the resolution of such informal objections and focus its efforts on confirming the proposed Plan.

21. Because the Stipulation enables the Debtor to efficiently and fully resolve the Debtor's informal objections to the Disputed Claims, the Debtor has concluded, in the proper exercise of its business judgment, that the resolution embodied in the Stipulation is fair, reasonable and in the best interests of the Debtor's estate and creditors. As noted above, the Stipulation is the result of good faith, arms-length negotiations between the Debtor and Simon. The Debtor therefore respectfully requests the entry of an order approving the Stipulation.

No Prior Request

22. No previous request for the relief sought herein has been made to this or any other Court.

Notice

23. Notice of this Motion will be given to the following parties, or in lieu thereof, to their counsel: (a) the Office of the United States Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtor (excluding insiders); (c) the Office of the United States Attorney General for the District of Delaware; (d) the Internal Revenue Service; (e) the

U.S. Department of Justice; (f) counsel to KIKO S.p.A; (g) counsel to Simon; and (h) any party who has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Settlement Order, substantially in the form annexed hereto at **Exhibit A**: (i) approving the Stipulation; and (ii) granting the Debtor such other and further relief as is just and proper.

Dated: June 12, 2018
Wilmington, Delaware

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