

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Chapter 11

Body Contour Ventures, LLC,¹

Case No. 19-42510-pjs

Debtors

Hon. Phillip J. Shefferly

**EB-5 INVESTORS' LIMITED OBJECTION TO DEBTORS' MOTION
FOR ENTRY OF (A) ORDER (I) ESTABLISHING BIDDING
PROCEDURES, (II) SCHEDULING AN AUCTION AND SALE HEARING
IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF
DEBTORS' ASSETS, (III) SETTING CERTAIN DATES AND
DEADLINES IN CONNECTION THEREWITH, (IV) APPROVING THE
FORM OF THE ASSET PURCHASE AGREEMENT, INCLUDING THE
TERMINATION FEE, AND (V) GRANTING RELIEF; AND (B) AN
ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF
DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS, (II) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY**

¹ Debtor's cases are being jointly administered for procedural purposes only and include Debtors Body Contour Ventures LLC, Case No. 19-42510, BCA Acquisitions, LLC, Case No. 19-42511, American Aesthetic Equipment, LLC, Case No. 19-42512, Knoxville Laser Spa LLC, Case No. 19-42513, LRX Alexandria, LLC, Case No. 19-42514, LRX Birmingham, LLC, Case No. 19-42515, LRX Charlotte, LLC, Case No. 19-42516, LRX Chicago, LLC, Case No. 19-42517, LRX Colorado Springs, LLC, Case No. 19-42518, LRX Dearborn, LLC, Case No. 19-42519, LRX East Lansing, LLC, Case No. 19-42520, LRX Grand Blanc, LLC, Case No. 19-42833, LRX Hoffman Estates, LLC, Case No. 19-42521, LRX Las Vegas Summerlin, LLC, Case No. 19-42522, LRX Mesa, LLC, Case No. 19-42523, LRX Naperville, LLC, Case No. 19-42524, LRX Novi, LLC, Case No. 19-42525, LRX Orland Park, LLC, Case No. 19-42526, LRX Plymouth-Canton, LLC, Case No. 19-42527, LRX Stone Oak, LLC, Case No. 19-42528, LRX Towson, LLC, Case No. 19-42530, LRX Troy, LLC, Case No. 19-42531, Premier Laser Spa of Greenville LLC, Case No. 19-42532, Premier Laser Spa of Indianapolis LLC, Case No. 19-42533, Premier Laser Spa of Louisville LLC, Case No. 19-42534, Premier Laser Spa of Pittsburgh LLC, Case No. 19-42535, Premier Laser Spa of St. Louis LLC, Case No. 19-42536, and Premier Laser Spa of Virginia LLC, Case No. 19-42537.

CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF AND RESERVATION OF RIGHTS

Mana Rama Tirth (“Ms. Rama Tirth”) and Natalja Macuka, (“Ms. Macuka”, and with Ms. Rama Tirth, collectively, the “EB-5 Investors”), for their Limited Objection to the above-captioned Debtors’ (the “Debtors”) “Motion for Entry of (A) an Order (I) Establishing Bidding Procedures, (II) Scheduling an Auction and a Sale Hearing in Connection with the Sale of Substantially all of Debtors’ Assets, (III) Setting Certain Dates and Deadlines in Connection Therewith, (IV) Approving the Form of the Asset Purchase Agreement, Including the Termination Fee, and (V) Granting Related Relief; and (B) an Order (I) Authorizing the Sale of Substantially all of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief” (the “Sale Motion”), state as follows:

Introduction

The EB-5 Investors, Body Contour Ventures DCMA, LP, and the Debtors

In 1990, Congress created the Immigrant Investor Program (“EB-5 Program”) as part of a larger set of immigration reforms under United States Congress’ Immigration Act of 1990 (“IMMACT90”). Congress established the EB-5 program to stimulate the U.S. economy by giving foreign entrepreneurs the

opportunity to permanently live and work in the United States after they have invested in a new commercial enterprise.

To be eligible for an EB-5 immigrant investor visa, one must:

- (a) Invest the requisite amount of capital in a new commercial enterprise;
- (b) Show the investment was made into a targeted employment area, where applicable;
- (c) Prove that the investment comes from a lawful source of funds;
- (d) Demonstrate that a new commercial enterprise, or its wholly-owned subsidiary, will create not fewer than ten full-time positions for qualifying employees; and
- (e) Show that the investor's participation in the business is consistent with regulatory requirements.

8 CFR 204.6(e); 204.6(j). *See also*, Immigration and Nationality Act (“INA”) §203(b)(5)(A)

In early 2018, Ms. Rama Tirth, a citizen of India, invested \$500,000.00 in a new commercial enterprise, Body Contour Ventures DCMA, LP (the “Limited Partnership”), in furtherance of her visa petition under the EB-5 program.

Similarly, in June 2018, Ms. Macuka, a citizen of Latvia, also invested \$500,000 in the Limited Partnership, in furtherance of her visa petition under the EB-5 program.

The Limited Partnership was created as a Delaware limited partnership with the purpose of operating an administrative services organization located at 137

National Plaza, Oxon Hill, MD 20745 to service the “Body Contour Ventures” organization (the “Project”). Richard Morgan, the Debtors’ principal, was the driving force behind the creation of the Limited Partnership.

In October 2017, the Limited Partnership was formed for the purpose of constituting the “new commercial enterprise” within the meaning of section 203(b)(5)(A) of the INA and related regulations for the EB-5 Investors’ capital investments under the EB-5 program. Under the business plan for the Project, the Limited Partnership would operate as an administrative service organization focused on the administrative and staffing needs of “LightRx Face and Body”-branded clinics. Mr. Morgan and the Limited Partnership forecasted the creation of at least 96 full time jobs over the next 24 months. With respect to each EB-5 investor, including Ms. Rama Tirth and Ms. Macuka, the job creation associated with his or her investment would take approximately 12 months. The project was billed as accepting no more than 8 EB-5 limited partners, therefore each investor would have a minimum of 10 full-time qualifying employees resulting from the operation of the Project within 2 ½ years following approval of his or her EB-5 application. (the “Business Plan”)². The Limited Partnership was intended to operate ten clinics and manage the operation of four customer-owned facilities in several states, including

² The Business Plan is a confidential document, subject to disclosure restrictions. It is available upon request, with the appropriate and necessary approvals, from the EB-5 Investors’ counsel.

parts of Maryland, Pennsylvania, Virginia and the District of Columbia, under a territory license from its general partner, BCV Management DCMA, LLC (the “General Partner”), an entity ultimately controlled and managed by Mr. Morgan. Relying upon the representations of Mr. Morgan and the Limited Partnership, the EB-5 Investors were made to feel confident in their ability to comply with all the requirements of the EB-5 program.

The Limited Partnership is under the ultimate control of Mr. Morgan, through various other corporate entities controlled by Mr. Morgan, including, but not limited to, the General Partner. Additionally, as part of the interconnectivity between and among the Limited Partnership, Mr. Morgan, the Debtors and various entities controlled by the Debtors, there are a plethora of licenses, pieces of equipment, and intellectual property under common usage, leases, and/or ownership. For reference purposes, a copy of a corporate structure chart generally illustrating the relationship between and among the Debtors, on the one hand, and the Limited Partnership and entities in control and/or management of the Limited Partnership, on the other hand, is attached hereto. *See Exhibit 1.*

In October 2018, *just a few months after investing \$500,000 in the Limited Partnership*, Mr. Morgan was unable to satisfy Ms. Rama Tirth’s request, through advisors, for a clear accounting of the investment funds, or documentation

evidencing that the investment funds had been utilized in a manner consistent with that outlined in the Business Plan.

Without operating clinics to staff, the EB-5 Investors will not receive monthly profit distributions from the Limited Partnership, as initially represented by Mr. Morgan. Moreover, without operating clinics to staff, the Limited Partnership cannot create a single job, let alone 10 full-time permanent positions for U.S. workers for each EB-5 Investor. Further, contrary to Mr. Morgan's representations, the Limited Partnership did not create any such jobs during the 12-month period after the EB-5 Investors' respective capital investments. Consequently, the EB-5 Investors, through no fault of their own, risk noncompliance with the requirements of the EB-5 program.

Despite repeated demands by Ms. Rama Tirth, or those working on her behalf, Mr. Morgan has been unwilling or unable to provide a complete accounting of her capital investment, nor has he taken any further actions to execute the Business Plan and operating model for the Limited Partnership.

Upon information and belief, there is now broad common usage and/or ownership between assets included in the Debtors' proposed sale(s) of assets to RVB Investment Group, LLC ("Stalking Horse Bidder") or other third parties, and the assets previously licensed or leased (or intended to be licensed or leased) to the

Limited Partnership and/or entities related to the Limited Partnership for the Limited Partnership's (and, ultimately, the EB-5 Investors') benefit (including intellectual property, equipment, licenses and/or clinic locations). In other words, the Limited Partnership's assets have been raided, and may be among those being offered for sale by the Debtors out of the reach of the Limited Partnership and the EB-5 Investors.

In connection with the misappropriation, mismanagement and neglect of the Project and Business Plan, concurrently herewith, the EB-5 Investors have filed a "Verified Complaint for Appointment of a Receiver and for Other Relief and Monetary Damages" in Oakland County Circuit Court against Mr. Morgan and the non-debtor corporate entities controlled and managed by him that in turn, exercise control, management and/or authority over the Limited Partnership (including, without limitation, the General Partner), seeking, among other things, appointment of a receiver to manage the affairs of the Limited Partnership and to exercise such control and management over such other entities as necessary to assert and preserve the Limited Partnership's rights and interests, and take possession of, manage, control and protect the assets, business and operations of the Limited Partnership.

By the Sale Motion, the Debtors seek authority to consummate a sale of substantially all of Debtors' assets used or useful in Debtors' businesses as more

particularly described in the Asset Purchase Agreement or otherwise in the Sale Motion (“Assets”).

Relative to the proposed sale of the Debtors’ Assets, the EB-5 Investors do not oppose the sale in principle, and, accordingly, submit this as a Limited Objection. However, they do oppose the sale of any of the Assets in and to which the EB-5 Investors or the Limited Partnership have rights, claims or interest, free and clear of such rights, claims and interests. The EB-5 Investors are not suggesting that they have an interest in all, or even a majority, of the Assets offered for Sale. That said, the EB-5 Investors have in no way consented to the transfer or use of any of the Limited Partnership’s assets in a manner not consistent with the Business Plan. The unauthorized transfer of assets away from the Limited Partnership has severely and unjustly imperiled each of the EB-5 Investors’ pending EB-5 petitions Accordingly, the EB-5 Investors request that the Sale Motion be denied to the extent that it pertains to any assets in and against which the EB-5 Investors and the Limited Partnership have rights, claims and interests, or, in the alternative, that such assets be sold expressly subject to such rights, claims and interests.

The Objection

A. Pursuant to Code Section 363(f), the EB-5 Investors Have an Interest in the Assets

Title 11 United States Code (the “Bankruptcy Code”) Section 363(f) governs the sale of property of the Debtors’ estates and provides that such sale may be:

free and clear of any interest in such property of an entity other than the estate, only if:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

While the term “interest” is undefined in the Code, courts have recognized that a “broad interpretation” of such term is appropriate. *See Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) (citing *United States v. Gonzales*, 520 U.S. 1, 5, 117 S.Ct. 1032, 1035, 137 L.Ed.2d 132 (1997)) (concluding “that the term ‘any interest’ as used in section 363(f) is sufficiently broad to include ‘possessory interest as a lessee’”). As explained by the Fourth Circuit, “while the plain meaning of the phrase ‘interest in such property’ suggests that not all general rights to payment are encompassed by the statute, Congress did not expressly indicate that, by employing such language, it intended to limit the scope of section 363(f) to *in rem* interests, strictly defined, and we decline to adopt such a restricted

reading of the statute here.” *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3rd Cir. 2003)(citing *In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996)). In its review of the *Leckie* case, the 3rd Circuit, noted, that “the term ‘any interest’ is intended to refer to obligations that are connected to, or arise from, the property being sold.” *Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000)(citing 3 Collier on Bankruptcy ¶ 363.06[1]). *See also, Matter of Spanish Peaks Holdings II, LLC*, 872 F.3d 892 (9th Cir. 2017) (the term “any interest” is “broad enough to permit sale of Chapter 7 debtor-lessor’s property unencumbered by its tenants’ leasehold interests”).

Applying either a broad or narrow interpretation of “interest in property” leads to a conclusion that the EB-5 Investors have an interest in certain of the Assets:

- Both the Limited Partnership and the Debtor entities are ultimately controlled and/or managed by Mr. Morgan.
- It is a fact that the EB-5 Investors’ cash infusion into the Limited Partnership was not used for the legitimate business purpose of the Project, as represented by Mr. Morgan.
- Mr. Morgan was unable to provide a clear accounting of the use of the EB-5 Investors’ funds or to confirm that the funds were used in the manner outlined in the Business Plan.

- As between the Limited Partnership and the corporate entities ultimately controlling and/or managing the Limited Partnership, on the one hand, and the Debtors, Mr. Morgan, and various entities controlled by the Debtors, on the other hand, there are many licenses, pieces of equipment, and intellectual property under common usage, leases, and/or ownership.

The unauthorized use and commingling of the Limited Partnership's assets with those of the Debtors must be resolved, with fair consideration of the EB-5 Investors' interests, prior to any sale of the Assets.

Conclusion

The EB-5 Investors are entitled to the value of their rights and interests as bargained for with the Limited Partnership and Mr. Morgan. Allowing the Limited Partnership to be divested of its assets, and to disregard the interests of the EB-5 Investors in the sale of these Assets by the Debtors would be patently unjust, and the results could be disastrous for the EB-5 Investors. The EB-5 Investors have already suffered monetary damage and the approval of their visa petitions is now in jeopardy. Quite simply, the EB-5 Investors have been victimized. Notwithstanding, the EB-5 Investors are not seeking to block the sale in principle. Rather, they are seeking to have any Assets in which they hold an interest excluded from the sale to the Stalking

Horse Bidder, or, alternatively, that any such sale be made subject to their rights, claims and interests of the Limited Partnership and EB-5 Investors – with the goal that such assets would be preserved for the benefit of the Limited Partnership, or such other result as would be equitable under the circumstances. The EB-5 Investors seek, and believe, that an equitable result is achievable for the Debtors' estates, Stalking Horse Bidder, and EB-5 Investors alike.

WHEREFORE, the EB-5 Investors respectfully request that this Court enter an Order: (i) sustaining this Limited Objection, and conditioning the approval of the Debtors' Sale Motion upon terms that exclude the sale of any Assets in which the EB-5 Investors hold an interest, or, alternatively, that any such Sale be expressly made subject to the rights, claims and interests of the Limited Partnership and EB-5 Investors; and (ii) granting such other relief as this Court deems just and proper.

Reservation of Rights

The EB-Investors hereby expressly reserve all of their respective or collective rights to amend, supplement, modify, or withdraw this Limited Objection and Reservation of Rights in whole or in part at any time. The EB-5 Investors do not waive any right they may have by filing this Limited Objection and Reservation of Rights, including, without limitation, the right to object to and/or raise any other issue in connection with the Sale Motion and any proposed sale transaction by the

Debtors, or these chapter 11 cases. The EB-5 investors also reserve the right to further address the Sale Motion, sale(s) of any other assets, sale order and any other issues raised by the Debtors or any other party at any hearing or through any pleading.

Dated: May 13, 2019

Respectfully submitted,

By: /s/ Paula A. Hall

Steven M. Ribiat (P45161)

Paula A. Hall (P61101)

Brooks Wilkins Sharkey & Turco PLLC

401 S. Old Woodward Avenue, Suite 400

Birmingham, MI 48009

(248) 971-1800; (248) 971-1801 – Facsimile

ribiat@bwst-law.com; hall@bwst-law.com

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

By: /s/ Paula A. Hall

Paula A. Hall (P61101)

Brooks Wilkins Sharkey & Turco PLLC

401 S. Old Woodward Avenue, Suite 400

Birmingham, MI 48009

(248) 971-1800; (248) 971-1801 – Facsimile

hall@bwst-law.com