

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>PEGASUS SATELLITE TELEVISION, INC. et al.</b>	:	<b>Case No. 04-20878</b>
	:	
<b>Debtors</b>	:	<b>(Jointly Administered)</b>
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	:	
<b>FELTON STREET ASSOCIATES LIMITED PARTNERSHIP</b>	:	<b>Adversary No.: 05-</b>
	:	
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PEGASUS SATELLITE TELEVISION, INC.</b>	:	
	:	
<b>Defendant</b>	:	
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**COMPLAINT**

Felton Street Associates Limited Partnership (“Felton Street” or “Plaintiff”), by and through its undersigned attorneys, complains against Pegasus Satellite Television, Inc. as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This adversary proceeding is commenced pursuant to Rule 7001, et seq. of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).
3. Venue in this Court is proper pursuant to 28 U.S.C. § 1409 as this adversary proceeding arises under and in connection with a case under Title 11 which is pending in this District.

4. This a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A)(B) and (O).

5. This Court has personal jurisdiction over the Defendant (defined below) under Bankruptcy Rule 7004(f), and because the Defendant is the Debtor.

### **PARTIES**

6. Felton Street is a limited partnership whose address is 1101 West DeKalb Pike, Suite 200, Wayne, Pennsylvania 19087.

7. Pegasus Satellite Television, Inc. (“PST” or “Defendant”), is a Delaware corporation and one of the Debtors in the above-captioned bankruptcy case, *In re Pegasus Satellite Television, Inc., et al.*, Case No. 04-20878 (the “Bankruptcy Case”).

### **BACKGROUND**

8. Felton Street is the owner of certain commercial real estate located in High Ridge Business Center, 123 Felton Street, Marlborough, Massachusetts (the “Marlborough Facility”).

9. Felton Street leased the Marlborough Facility to PST, which consisted of a building and a surrounding tract of land on which the building is situated, as evidenced by a commercial lease dated February 25, 2000 (the “Lease”), a copy of which is annexed hereto as Exhibit “A”.

10. At the time the Lease between Felton Street and PST was entered into, the building and the surrounding tract of land were still under construction and, accordingly, both Felton Street and PST contemplated that certain construction work and the installation of certain fixtures would take place prior to PST taking possession.

11. Following completion and/or substantial completion of the construction work and the installation of the fixtures, PST took possession as tenant.

12. The Lease did not terminate under its provisions until September 30, 2007.

13. The Lease was amended August 31, 2001 (the "First Amendment to Lease"), February 1, 2002 (the "Second Amendment to Lease"), March 18, 2002 (the "Third Amendment to Lease"), April 16, 2002 (the "Fourth Amendment to Lease"), April 24, 2002 (the "Fifth Amendment to Lease"), and May 1, 2002 (the "Sixth Amendment to Lease"). The amendments to the Lease are collectively annexed hereto as Exhibit "B".

14. The First Amendment to Lease addresses various issues, including PST's option to purchase. The Second, Third, Fourth, Fifth and Sixth Amendments to Lease primarily address and extend the dates applicable to PST's purchase option.

15. On June 2, 2004, PST and the other Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

16. On November 9, 2004, an Order was entered granting the motion of PST and the other Debtors to reject certain unexpired leases and executory contracts; the Order specifically provided for the rejection of the Lease by January 31, 2005.

17. PST rejected the Lease effective December 31, 2004.

18. Under the terms of the Lease and its related exhibits and documents, Felton Street has an ownership interest in, *inter alia*, all alterations and improvements made by PST for which Felton Street's consent was required to be requested, all additions and improvements remaining at the building and surrounding tract of land at the Marlborough Facility upon the expiration or sooner termination of the Lease, and those fixtures which Felton Street affixed to, built into, and/or attached to the building and surrounding tract of land at the Marlborough Facility.

19. On November 10, 2004, the Court entered an Order granting PST authorization to sell, *inter alia*, certain property located in or on the premises of the Marlborough Facility by

auction (the "Auction"), to be held by Garcel, Inc. d/b/a The Great American Group ("Great American") as Liquidation and Auction Consultant (the "Auction Order").

20. On November 16, 2004, Felton Street filed a Motion for Emergency Hearing for reconsideration of the Auction Order (the "Emergency Motion").

21. The Court held a telephonic hearing on the Emergency Motion on November 17, 2004, during which Felton Street and PST reached an agreement, on the record, regarding the procedures to be followed at the pending Auction at the Marlborough Facility and reserving Felton Street's right to assert a claim for payment from the proceeds of the Auction for items sold at the Auction that Felton Street claimed were owned by Felton Street as fixtures ("Fixtures") under the Lease or otherwise (the "Reserved Claim"). The Fixtures are included in the lots (the "Fixture Lots") set forth on Exhibit "C".

22. Prior to the Auction, Great American valued all of the Debtors' auction lots and valued the Fixtures between \$96,600 and \$123,075. A copy of Great American's valuation of the Fixture Lots is annexed hereto as Exhibit "C".

23. Felton Street relied on Great American's valuation of the Debtors' auction lots, including the Fixture Lots, in calculating its bid.

24. At the Auction, Felton Street made a bulk bid for certain property located in or on the premises of the Marlborough Facility inclusive of the Fixture Lots in the amount of \$288,750, comprised as follows: bulk bid in the amount of \$250,000; 10% premium of \$25,000; and 5% sales tax of \$13,750.

25. Felton Street's bulk bid was the successful bid. A copy of the Bill of Sale is annexed hereto as Exhibit "D".

**COUNT I – DECLARATORY RELIEF**

26. Felton Street incorporates herein by reference the allegations contained in paragraphs 1 through 25 as though set forth in their entirety.

27. Under the terms of the Lease as amended or otherwise, Felton Street was the owner of the Fixtures and is entitled to the proceeds of the Auction arising from the sale of the Fixture Lots.

28. Since Felton Street was the successful bidder at the Auction, it not only is entitled to the proceeds of the Auction of the Fixture Lots; but also, Felton Street is entitled to a refund of the related sales tax and 10% premium it paid on its winning bid for the Fixtures Lots.

29. Both Felton Street and PST relied on Great American's valuation of the Debtors' auction lots, including the Fixture Lots, and Felton Street calculated its successful bid based on Great American's valuation.

30. This Court can determine the amount of the proceeds of the Auction that are due to Felton Street in payment of its Reserved Claim based on the Great American valuation.

WHEREFORE, Felton Street respectfully seeks an Order (a) declaring that the Fixtures purchased by Felton Street at the Auction as part of Felton Street's bulk purchase were the property of Felton Street; (b) declaring that Felton Street is entitled to payment from the Defendant of the value of the Fixture Lots as determined by the Court based on the Great American valuation from the proceeds of the Auction, along with the attendant sales taxes and 10% premium; and (c) such other and further relief that this Court deems just and equitable.

**COUNT II – TURNOVER**

31. Felton Street incorporates herein by reference the allegations contained in paragraphs 1 through 30 as though set forth in their entirety.

32. Pursuant to its Reserved Claim, Felton Street is entitled to payment by PST from the proceeds of the Auction equal to the value of the Fixtures Lots plus sales taxes and 10% premium.

33. Despite Felton Street's requests, PST has failed and refused to agree to the value the Fixture Lots or to pay to Felton Street the amounts due it on the Reserved Claim from the proceeds of the Auction.

WHEREFORE, Felton Street respectfully seeks an Order directing PST to turnover to Felton Street those proceeds from the Auction equal to the value of the Fixture Lots as determined by the Court, plus sales taxes and 10% premium and such other and further relief that this Court deems just and equitable.

LAMBERT COFFIN

By: /s/ Bruce B. Hochman, Esquire  
Bruce B. Hochman, Esquire  
477 Congress Street – 14<sup>th</sup> Floor  
P.O. Box 15215  
Portland, ME 04112-5212  
(207) 874-4000

WEIR & PARTNERS LLP

By: /s/ Kenneth E. Aaron, Esquire  
Kenneth E. Aaron, Esquire  
1339 Chestnut Street, Suite 500,  
The Widener Building  
Philadelphia, PA 19103  
(215) 665-8181

*Attorneys for Plaintiff, Felton Street Associates  
Limited Partnership*

Dated: April 13, 2005