

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	
	:	CHAPTER 11
GELT PROPERTIES, LLC, et al,	:	
	:	Bankruptcy No. 11-15826(MDC)
Debtor.	:	(Jointly Administered)

In re:	:	
	:	CHAPTER 11
GELT FINANCIAL CORPORATION	:	
	:	Bankruptcy No. 11-15827 (MDC)
Debtor.	:	

**MOTION OF THE DEBTORS FOR AN ORDER APPROVING
SETTLEMENT BY AND BETWEEN THE DEBTORS AND
BENEFICIAL MUTUAL SAVINGS BANK
PURSUANT TO FED. R. BANKR. P. 9019**

Gelt Properties, LLC and Gelt Financial Corporation (collectively the "Debtors"), by and through their attorneys, Ciardi, Ciardi & Astin, hereby moves this Court for an Order granting this Motion (the "Motion") and authorizing and approving the settlement agreement by and between the Debtor sand Beneficial Mutual Savings Bank ("Beneficial") pursuant To Fed. R. Bankr. P. 9019 and, in support hereof, the Debtors respectfully state as follows:

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for the relief sought herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Background

4. On July 26, 2011 (the "Petition Date"), Gelt Financial Corporation ("Gelt Financial") and Gelt Properties, LLC ("Gelt Properties") (collectively the "Debtors") filed separate voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code §§ 101, et seq. An Order for Relief was entered simultaneously therewith. The cases of each debtor are being jointly administered.

BACKGROUND

5. On or about November 29, 2006, Beneficial extended to Gelt Financial a line of credit loan of up to a maximum principal amount of \$3,000,000 (the "LC Loan");

6. The LC Loan is secured by (1) five "Open End Mortgage Commercial Mortgage, Security Agreement and Assignment of Leases and Rents" on properties owned by Gelt Financial and (2) seventeen "Collateral Assignment of Mortgage, Note and Other Loan Documents, including Assignments of Rents and Lease" with respect to loans made by Gelt Financial to third parties; and (3) a Guaranty and Suretyship Agreement dated November 29, 2006, from H. Jack Miller, Uri Shoham and M. Ari Miller (collectively, the "Guarantors"), to Beneficial.

7. In addition to the LC Loan, Beneficial made the following six loans to Gelt Properties:

(1) A Loan (“125 Loan”) in the original principal amount of \$119,000, made 24, 2009, repayment of which is secured by an Open End Mortgage and Security Agreement of even date therewith, pursuant to which Gelt Properties granted, conveyed and mortgaged to Beneficial that certain premises located at 125 W. Rittenhouse Street, Philadelphia, Pennsylvania 19144.

(2) A loan (“1250 Loan”) in the original principal amount of \$53,250, made September 15, 2008 (the “1250 Note”), repayment of which is secured by an Open End Mortgage and Security Agreement of even date therewith, pursuant to which Gelt Properties granted, conveyed and mortgaged to Beneficial that certain premises located at 1250 North Newkirk Street, Philadelphia, Pennsylvania 19121.

(3) A loan (“204 Loan”) in the original principal amount of \$176,250, made June 5, 2008, repayment of which is secured by a Mortgage and Security Agreement of even date therewith, pursuant to which Gelt Properties granted, conveyed and mortgaged to Beneficial that certain premises located at 204 19th Avenue, Irvington, Essex County, New Jersey 07111.

(4) A loan (“7049 Loan”) in the original principal amount of \$236,250, made September 24, 2008, repayment of which is secured by an Open End Mortgage and Security Agreement of even date therewith, pursuant to which Gelt Properties granted, conveyed and mortgaged to Beneficial that certain premises located at 7049 Lincoln Drive, Philadelphia, Pennsylvania 19119.

(5) A loan (“909 Loan”) in the original principal amount of \$262,500, made June 30, 2008, repayment of which is secured by an Open End Mortgage and Security Agreement of even date therewith, pursuant to which Gelt Properties granted, conveyed and mortgaged to Beneficial that certain premises located at 909 South 21st Street, Philadelphia, Pennsylvania 19146.

(6) A loan (“1509 Loan”) in the original principal amount of \$82,500, made June 5, 2008, repayment of which is secured by an Open End Mortgage and Security Agreement of even date therewith, pursuant to which Gelt Properties granted, conveyed and mortgaged to Beneficial those certain premises located at 1509 and 1509 ½ Airbrake Avenue, Turtle Creek Borough, Allegheny County, Pennsylvania 15145. The LC Loan together with the 125 Loan, 1250 Loan, 204 Loan, 7049 Loan, 909 Loan and 1509 Loan are collectively hereafter called the “Loans”.

8. Pre-Petition, the Debtors defaulted under the terms of the Loans and, as a result of the defaults, Beneficial entered judgment (the “Judgments”) against Gelt Financial and Beneficial also confessed judgment against H. Jack Miller, Uri Shoham,

and Ari Miller (collectively the "Sureties").

9. Following the Petition Date, Beneficial sought relief from the automatic stay and, on September 19, 2012, this Court entered an order granting Beneficial relief from the Automatic Stay.

10. The Debtors and Beneficial have recently engaged in good faith negotiations and have reached an agreement to resolve Beneficial's claims against the Debtors in connection with the Loans and the Judgments.

11. The Debtors and Sureties acknowledge and agree that pursuant to the Loan Documents and Judgments, they were and are indebted and liable to Beneficial as of the Petition Date in the aggregate amount of \$3,690,692.92, plus continuing interest, costs and fees all as may be recoverable under Bankruptcy Code Section 506 (the "Obligation").

12. The general terms of the Settlement, as more fully set forth in the Settlement Agreement attached hereto as Exhibit "A" are, inter alia, that in exchange for payment by the Debtors of \$425,000.00 immediately upon Court approval of the Settlement (but in no event later than October 31, 2013) and payment of an additional \$575,000.00 on or before December 31, 2013, along with a full release of all claims against Beneficial, Beneficial will satisfy its' secured claims against the Debtors and property of the Debtors and release the Sureties, while preserving a \$500,000 allowed unsecured claim in the Debtors' cases.

13. Notwithstanding that Beneficial has previously obtained unfettered relief from the automatic stay, given that the Debtors will be expending substantial sums to

effectuate the proposed settlement, the Debtors believe that it is necessary to obtain the authorization and approval of this Court to enter into and perform under the Settlement Agreement and Beneficial and the Debtors have made their agreement subject to prior court approval.

Relief Requested and Legal Standard

14. By this Motion, the Debtors respectfully request the entry of an order approving the Settlement Agreement between the Debtors and Beneficial and authorizing the Debtors to effectuate the Settlement Agreement pursuant to Fed. R. Bankr. P. 9019.

15. Rule 9019 provides that "[o]n motion by the [T]rustee 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 to any other entity as the court may direct. Fed. R. Bankr. P. 9019(a); see also *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996).

16. The Debtors, as debtors in possession and exercising the rights of a Trustee is obligated to maximize the value of the estate and make its decisions in the best interests of all of the creditors of the estate. See *Martin*, 91 F.3d at 394. The Debtors believe, in their business judgment, that the Settlement Agreement is in the best interests of the estate and all of its creditors, particularly given that the Debtors maintain absolutely no defense to the claims of Beneficial and Beneficial has already obtained relief from the automatic stay. *In re Neshaminy Office Bldg. Assocs.* 62 B.R. 798, 803 (E.D. Pa. 1986)

17. Courts generally defer to a debtor's business judgment when there is a

legitimate business justification for the debtor's decision. See Martin, 91 F.3d at 395.

18. In determining whether a settlement should be approved under Bankruptcy Rule 9019, the Court must "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Id. at 393. In striking this balance, courts should consider four factors: "i) the probability of success in the litigation; ii) the likely difficulties in collection; iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and iv) the paramount interest of the creditors." Id. (citation omitted).

19. A review of these four factors demonstrates that the Settlement is in the best interests of the estate and all of the creditors, is reasonable and within the Debtor's sound business judgment. The Debtors are liable to Beneficial under the Loans and have no defenses thereto. In point of fact, final judgments have been entered Pre-Petition.

20. The amount of the debt owed by the Debtors is significantly greater than the amount that the parties have agreed the Debtors will pay to Beneficial.

21. Significantly, the Settlement will allow for the release of all secured claims against the Debtors by Beneficial and a release of all liens, mortgages, claims and encumbrances of Beneficial against property of the Debtors without protracted and costly litigation and/or collection efforts and defensive efforts.

22. Approval of the Settlement Agreement is also in the best interests of the remaining creditors of the Debtors as it will leave the Debtors with assets with which they can propose a plan.

23. The Debtors respectfully request that, pursuant to Bankruptcy Rule 9006(c), the Order entered by this Court granting this Motion be effective immediately so that the parties may successfully implement the settlement and allow for the first payment to Beneficial to be made not later than October 31, 2013, as required by the Settlement Agreement.

WHEREFORE, the Debtors respectfully request this Court enter an order approving the Settlement by and between the Debtor and Beneficial pursuant to Fed. R. Bankr. P. 9019 and granting such other relief as may be just.

CIARDI, CIARDI & ASTIN

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Dated: 10/16/2013