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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of: LIBERTY HARBOR HOLDING, LLC, et al. Debtors.	**Case No. 12-19958, 12-19961 and 12-19964** **Jointly Administered** **Honorable Novalyn L. Winfield**

DEBTORS' RESPONSE TO SWJ MANAGEMENT'S PRELIMINARY OBJECTION TO SETTLEMENT; OBJECTIONS TO DISCLOSURE STATEMENT AND OBJECTIONS BY JAMES J. LICATA

This pleading is submitted on behalf of the Debtors and in response to the objections filed on behalf of SWJ Management and James Licata. SWJ Management has filed objections to both the Debtors' Disclosure Statement and the Debtors' settlement with the Proskauer Parties.[1]

[1] We note that to a very large extent these "objections" relate more to the state court litigation than they do to any genuine disclosure issues. We will respond to them as they are written.

James Licata is himself a debtor in chapter 7 before the Bankruptcy Court for the District of Connecticut. He has been such since 2002. Any claims which might be asserted in this case are clearly property of either his bankruptcy estate or that of his principal operating company, First Connecticut Consulting Group, Inc. ("FCCG") which has also been in bankruptcy since 2002. In fact, the Trustees for Mr. Licata's estate and for FCCG (Ronald Chorches and Richard Coan) have appeared here and filed their own objections to the Disclosure Statement to which we are separately responding and which we believe will be fully resolved on a consensual basis.

SWJ Management is an entity formed earlier this year, long after these cases were filed. SWJ Management claims to own and assert the very same claims that the Licata Trustees have been asserting for the last six years. SWJ Management did not acquire their claims or interests from the Trustees. The irregular and highly suspicious transactions by which SWJ Management acquired the claims and interests they are asserting here will be addressed below.

In sum, whatever rights, claims or interests may be asserted here belong to the two Connecticut Bankruptcy Trustees. Neither James Licata nor SWJ Management (which may be no more than a shill for James Licata) is a creditor or a party in interest in this case.

WHO IS SWJ MANAGEMENT AND WHERE DID IT COME FROM?

SWJ Management was formed on February 13, 2013. On or about February 20, 2013 it supposedly received a deed to real estate owned by the Debtor, Liberty Harbor Holding. To date, notwithstanding all the assertions of counsel that SWJ Management "is the deed holder of record", we have received no documentation showing that this deed was actually

recorded (*e.g.* a book and page reference to the Hudson County land records) or that the real estate transfer tax was paid (a canceled check or wire transfer confirmation). More importantly, the "deed" which SWJ Management claims to "hold" is a deed from the entity known as SWJ Holdings. At the time that deed was supposedly executed and for the prior eight months, SWJ Holdings did not hold title to the Liberty Harbor property. In an order dated July 11, 2012, *inter alia*, this Court ruled that:

> "The deed. . .purporting to convey title to SWJ Holdings. . .is hereby declared void and shall be so designated on the land records of Hudson County. . ." [Exhibit A attached]

Furthermore, any such transfer would be a flagrant violation of the January 10, 2007 Order entered in the State Court by Judge Vichness (Exhibit B attached) and the automatic stay in these pending chapter 11 cases.

Even more significant than SWJ Management's overstatement of their position are the facts they do not tell us. In the related case, *In re: First Connecticut Holding Group LLC, IV*, Case No.: 13-13090 (NLW), this Court has already sanctioned SWJ Management for failing to comply with discovery requests and subsequent to that sanction SWJ Management has persisted in its failure and refusal to produce any documents or its principal for a deposition. (Exhibit C attached).

By chance, in another case, one of the other parties in the state court litigation was given a copy of a document which was then shared with all parties in the state court case, including us. (Exhibit D attached) Exhibit D on its face appears to be an "Agreement" between Richard Annunziata (the purported majority owner of SWJ Management) and James Licata dated February 7, 2013. Although, in prior submissions by SWJ Management

we have been told that SWJ Management acquired all the assets of SWJ Holdings including the Liberty Harbor property, this "Agreement" appears to paint a very different picture. From Exhibit D it appears on the face of it that either SWJ Management only claims a 20% interest in the disputed properties or that James Licata owns 80% of SWJ Management. This "Agreement" is consistent with representations made by Mr. Annunziata to Judge Rothschild, namely, that he paid $550,000 to James Licata. Since James Licata is still a debtor in a chapter 7 before the Bankruptcy Court in Connecticut and since it appears that none of this was reported to that Court or his Trustee, this recent revelation raises more issues than just the question of why SWJ Management is so reluctant to comply with simple discovery demands.

In its objections to the Disclosure Statement SWJ Management starts by redesigning the universe to place itself at the center. In fact, as shown above, SWJ Management is no more than a last minute arrival in a 14-year old case. More importantly, as the February 7, 2013 agreement between Mr. Licata and Mr. Annunziata shows, SWJ Management may be simply a front for James Licata who has been in the state court litigation since May of 1999.

Contrary to the grotesquely exaggerated rhetoric of SWJ Management, its due process rights are and will be more than adequately protected in the State Court.

Furthermore, the majority owners of SWJ Holdings have repudiated the alleged sale to SWJ Management and asserted that, in fact, whatever rights, claims or interests SWJ Holdings had acquired from the Bankruptcy estates of James Licata and FCCG have been transferred to the two Trustees for those estates in partial satisfaction of the judgment those Trustees have against SWJ Holdings. This transfer to the Trustees was made pursuant to an

agreement which was approved by Judge Shiff in the Connecticut bankruptcy cases over the objections of SWJ Management. This dispute between SWJ Holdings and SWJ Management was to be the subject of an evidentiary hearing which Judge Rothschild scheduled for November 12, but adjourned at the last minute because of problems with his trial calendar. This evidentiary hearing, which is now scheduled for January 2, 2014, was scheduled after receipt of a communication from Gordon Duval, a Utah attorney who has represented SWJ Holdings and is himself a defendant in the state litigation. In his communication Mr. Duval asserts emphatically that SWJ Holdings conveyed whatever rights, claims or interests it had to the Trustees and not to SWJ Management.

THE LICATA OBJECTIONS

The essential point of the Licata objections appears to be that the Disclosure Statement should have contained a more detailed explication of the Moccos' mid-1990's reorganization in this bankruptcy court and the business relationship between Peter Mocco and James Licata. Rather than contesting the Licata version of history on a point by point basis, we simply attach copies of three judicial opinions arising from the trial of a contested motion in the now 11-1/2 year old procedurally consolidated bankruptcy cases of James Licata and his principal operating company, First Connecticut Consulting Group, Inc. (*In re: James J. Licata*, Case No.: 02-51167 (AHWS); *In re: First Connecticut Consulting Group, Inc.*, 02-50852 (AHWS); both in the United States Bankruptcy Court for the District of Connecticut).

In addition to these two cases, Licata filed more than 25 additional cases for individual entities related to various real estate deals with which he had been involved. We moved, on behalf of the Mocco Parties, to dismiss 21 of those bankruptcy cases. Newly

retained bankruptcy counsel for Licata voluntarily dismissed 15 of those cases and we withdrew our motion as to one. The remaining five entities (First Connecticut Holding Group LLC, II, III, X, XI and XIII) owned approximately $75 mil worth of real estate essential to continued operation of the Mocco businesses.

For reasons relating to the schedule of the Connecticut Bankruptcy Court, the contested motion (Bankr. Rule 9014) was transferred for trial by the Honorable Colleen Brown in the Bankruptcy Court for the District of Vermont. In February 2004, Judge Brown heard eight days of testimony and in July 2004 rendered a written opinion including very detailed findings of fact about the business relationship between Peter Mocco and James Licata (Exhibit E). In March of 2006, the Honorable William Sessions of the District Court for Vermont affirmed Judge Brown in another thorough and detailed opinion (Exhibit F). In November 2007, the United States Court of Appeals for the Second Circuit affirmed (Exhibit G).

If the creditors in the present case need historical information we suggest providing them with copies of the detailed and well written opinions of Judge Brown and Judge Sessions rather than the distorted reimaginings of James Licata.

Finally, if the assertion in the final paragraph of Mr. Licata's objections, namely, that he intends to submit his own plan for Liberty Harbor, is anything more than posturing, we submit the following information for the Court's assistance:

a. In September of 2007 Mr. Licata pled guilty to federal wire fraud charges (Exhibit H);

b. Mr. Licata has been in personal bankruptcy since June of 2002 and, in that case there are at least six adversary proceedings seeking to deny Mr. Licata a bankruptcy discharge, all based on fraud.

Specific Responses to SWJ Management Preliminary Objection to Settlement

1. The assertion by SWJ Management (in para. 1) that these bankruptcy proceedings "have no legitimate bankruptcy purpose" and that they serve only to "undermine the State Court proceedings" is based on a willful disregard or ignorance of the procedural history of this case, the related *First Connecticut Holding Group LLC, IV* ("FCHG IV") case, and the state court litigation. It was this Court and these proceedings which made possible the voiding of the SWJ Holdings "wild deed" on Liberty Harbor which, in turn, enabled the Debtors' settlements with the Kerrigans, New Jersey Transit, the JCRA and the City of Jersey City.

In the event that they may have forgotten, we want to remind SWJ Management that they were the ones who removed the state court case to this Court one week before the September 30, 2013 trial date that Judge Rothschild had given us.

2. The settlement with Proskauer did not involve any "ownership" issues since Proskauer never asserted any ownership interest. Proskauer was a defendant on damages claims asserted by the Moccos. Proskauer's settlement does not change any of the issues in the so-called "ownership trial" which is at this point only part of the case that is scheduled for trial. At least two additional trials on damages issues are contemplated at this time.

3. It is certainly an attention-getter when an entity that has willfully and persistently refused to provide even the most basic discovery complains that the settlement of a professional liability claim is being done under seal. The settlement here was effected on behalf of 18 Mocco affiliated persons and entities. Professional liability claims are often if not customarily done under seal. When viewed in light of the Debtors' Plan and the commitment of the Debtors' principals, the precise terms of this settlement are not a material fact necessary for determination of whether this settlement is in the best interest of the estate and its creditors.

4. Contrary to SWJ Management's implication in para. 2 of their objection to the settlement, there is no motion currently pending before Judge Rothschild seeking to unseal the settlement with Proskauer.

Specific Responses to Objections of SWJ Management
To the Disclosure Statement

1. At the outset, we must point out that SWJ Management misperceives the nature of the dispute as to ownership of the Liberty Harbor property. James Licata, SWJ Holdings, the Trustees for James Licata and FCCG and the Proskauer Parties have for years asserted that sometime early in 1999 an agreement was reached between Peter Mocco and James Licata to the effect that the 19-acre tract of land (now owned by Liberty Harbor Holdings) would become part of the Mocco/Licata joint venture. No one is claiming that the 19-acre tract was ever conveyed to James Licata or any successor in interest to him. Even the Proskauer Parties who prepared the quit claim deed which purported to convey the property to SWJ Holdings acknowledged consistently in the litigation that it was their position that the property belonged to the joint venture.

In jumping to their glib conclusion, SWJ Management ignores the facts that even if the state court litigation on the ownership of Liberty Harbor is unsuccessful, Mocco will still hold a half-interest and the right under the Joint Venture Agreement to manage and continue the development of the 19 acres. Likewise, Mocco will still be the owner and still developing the other Liberty Harbor acreage, including the property recently acquired from the Kerrigans, other Liberty Harbor property acquired in recent years by other Mocco entities and the Phase I property (not part of the 19 acres but part of Liberty Harbor) on which Mocco entities have already completed approximately $180 mil worth of construction and on which there are approximately 700 families already living, as well as several operating businesses. The glib conclusion asserted in paragraph 2 of the SWJ Management objections that "the Plan is patently unconfirmable" is based, again, on a willful disregard or ignorance of the complex facts relating to the project known as Liberty Harbor, and the role the JCRA plays in that project.

2. In paragraphs 8-9, SWJ Management resorts to absurd and baseless accusation. All the parties to the ownership dispute have entered appearances before this Court in this case. It is therefore absurd for SWJ Management to assert that "the very existence of this entire plan process has been concealed from Judge Rothschild" (para. 8) or that "it has also been concealed from all the other parties to the Mocco v. Licata litigation" (para. 9).

3. In paragraph 10, SWJ Management makes what may be the most irresponsible and sanctionable of their arguments. SWJ Management asserts in the closing sentence of paragraph 10 that:

> "They. . .(the Mocco Parties). . .have, thus, to date, successfully undermined the two seminal Bankruptcy orders in these proceedings, the 1996 Confirmation Order of Judge Gindin as well as the March 2006, 363 Order of Judge Schiff (sic), by collaterally attacking them in State Court." (para. 10)

In making this baseless argument, SWJ Management ignores the fact that five federal judges (Judge Brown, Judge Sessions and 3 judges of the Court of Appeals) have heard and rejected the Licata arguments that Mocco was somehow violating the order confirming his 1996 plan of reorganization or that he had committed a fraud on the Bankruptcy Court and Judge Gindin. (See Exhibits E, F and G) Furthermore, Judge Shiff has repeatedly rejected the argument that the 363 sale order that he entered terminated Mocco's rights in the property. In fact, as recently as April 7 of this year, Judge Shiff on a motion brought by SWJ Management, again rejected this argument and repeated what he has said several times before, namely, that all Mocco rights survived the 363 sale and that all the ownership issues would be resolved in the state court in New Jersey. In short, Judge Shiff has repeatedly made it clear that all Mocco rights, claims and interests would survive the 363 sale. For example, the actual closing of the 363 sale took place pursuant to an order dated March 9, 2006 (Exhibit I) which specifically incorporated by reference a prior order dated November 16, 2005. The November 16, 2005 order contained the following paragraph 17:

> In the event the Purchaser acquires the Acquired Assets pursuant to the Amended FAAPA, notwithstanding anything to the contrary contained in this Order and the Sale Order,: (i) this Order and the Sale Order are not intended to adjudicate or resolve any of the claims, defenses or issues that have been and continue to be disputed between the Moccos and their affiliated entities (the "Mocco Parties"), and James and Cynthia Licata and their affiliated entities (the "Licata Parties"); (ii) the Purchaser is acquiring all claims, defenses, and interests of the

> Licata Parties subject to all existing claims, defenses and interests of the Mocco Parties; and (iii) to the extent that the Purchaser and the Mocco Parties continue to be in disagreement as to their respective claims, defenses and asserted interests in the various entities and properties set forth in the FAAPA at Exhibit A, those disputes shall either be resolved in the pending State Court proceedings or the proceedings now on appeal to the United States District Court for the District of Vermont, however this Order shall not prohibit any party from bringing any proceedings or motions before this Court which may be properly venued in this Court.

4. The remainder of the SWJ Management objections are no more than noise, accusations and innuendo about forum shopping and judicial predisposition. These accusations are so devoid of substance as to be unworthy of response, except to say that they are categorically untrue and inconsistent with the facts of what actually happened here.

Respectfully submitted,
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