

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:

**TAR HEEL OIL II, INC. and
GAMBILL OIL, LLC,

Debtors.**

**Case No. 16-50216
(Jointly Administered)**

Chapter 11

**MOTION TO APPROVE SETTLEMENT AND AUTHORIZE SALE OF CASH
REGISTER SYSTEM FREE AND CLEAR OF LIENS UNDER 363(f)**

John Paul H. Cournoyer, Chapter 11 Trustee for Tar Heel Oil II, Inc. and Gambill Oil, LLC (the “Trustee”) moves the Court pursuant to § 327 of the Bankruptcy Code and Rules 2014 and 6003 of the Federal Rules of Bankruptcy Procedure as follows:

1. On March 4, 2016 (the “Petition Date”), Tar Heel Oil II, Inc. (“Tar Heel”) and Gambill Oil, LLC (“Gambill”) (jointly the “Debtors”) each filed voluntary petitions seeking relief under Chapter 11 of the Bankruptcy Code. On July 21, 2016, the Court entered a Final Order Authorizing Joint Administration, ordering that the cases be consolidated under Case No. 16-50216.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On November 3, 2016, a hearing was held on the motion to appoint a trustee filed by the Bankruptcy Administrator, and the motion was granted in open Court. On November 4, 2016, an Order was entered by the Bankruptcy Court appointing John Paul H. Cournoyer as Chapter 11 Trustee for the Debtors (Doc. #143).

4. In August 2014, Tar Heel entered into an agreement for the consignment sale of fuel (the “Supply Agreement”) with Shrinik, Inc. and Santoshkumar Patel d/b/a College Park Convenience Store (“Dealer”).

5. In August 2014, College Park Convenience Store, LLC, which was owned by Arthur Lankford, a 50% owner of Tar Heel, entered into an asset purchase agreement to sell certain real property located at 1204 River Street, Wilkesboro, North Carolina (the “Premises”) and other assets located on the Premises to Dealer.

6. Prior to the filing of the bankruptcy case, Tar Heel attempted to transfer the ownership of underground storage tanks (“USTs”) located at the Premises, but such attempt was rejected by the NC Dept. of Environmental Quality (“NC DEQ”), due to the lack of a bill of sale and incomplete notarization, and the registration and ownership of the USTs remains the in Tar Heel’s name.

7. Dealer owes Tar Heel for petroleum products supplied prior to November 1, 2016. In addition, Tar Heel owns the upgraded cash register system currently located and used at Dealer’s Premises.

8. Since the appointment of Trustee, Debtors have modified their business from a consignment sale model to a wholesale model, and the Dealer does not wish to do business with Tar Heel under this new model.

9. Tar Heel and Dealer have agreed to a compromise and settlement as more particularly set forth in the Settlement Agreement attached hereto as “Exhibit A” and summarized as follows:

a. Tar Heel shall reject the Supply Agreement pursuant to 11 U.S.C. § 365;

b. Dealer shall pay Tar Heel \$4,140.26 for petroleum products previously supplied;

c. Dealer shall pay Tar Heel \$7,526.49 in exchange for the transfer of Tar Heel's interest in the new cash register system installed at the Dealer's Premises and the USTs located at the Dealer's Premises.

d. Tar Heel shall deliver to Dealer a bill of sale for the new cash register system. Subject to the satisfaction of Dealer's obligation to remain a CITGO-branded site, as set forth below, Tar Heel shall warrant that it has good and marketable title to the new cash register system installed at the Dealer's Premises.

e. Tar Heel shall deliver to Dealer a bill of sale for the USTs, along with a completed Form UST-15 and all records and testing reports and data maintained by Tar Heel with regard to the USTs located at the Dealer's Premises.

f. Dealer shall remain a CITGO-branded site until at least October 31, 2017. Tar Heel and Trustee will facilitate the transfer of the CITGO brand from Cary Oil to another CITGO-branded fuel supplier of Dealer's choice.

g. Dealer shall deliver to Trustee a bill of sale for the used cash register system removed from the Dealer's Premises.

h. Except for the obligations set forth in the Settlement Agreement between the parties, Tar Heel and Dealer waive any and all claims against each other, of any nature, whether known or unknown, as of the date of the Settlement Agreement. As used herein, the term "claim" has the meaning ascribed to it in the Bankruptcy Code.

10. The proposed settlement is fair and equitable and is in the best interests of Debtors, creditors, and other parties in interest in that the settlement eliminates the cost and expense of litigating the disputes the parties.

11. The Trustee proposes to retain and/or distribute the proceeds received from Dealer as follows:

a. \$4,140.26 in proceeds, which are attributable to the Debtor's accounts receivable, shall be retained by the Trustee and placed in a designated "cash collateral" sub-account, and not used in connection with operations;

b. \$4,166.75 in proceeds, which are attributable to the balance owed to CITGO for the new cash register system, shall be paid to Cary Oil, which Cary Oil shall in turn pay to CITGO;

c. \$3,359.74 in proceeds, which are attributable to the UST, shall be placed in a designated "equipment proceeds" sub-account, and not used in connection with operations.

12. Cary Oil and BLT Investments, LLC both assert liens in the Debtor's equipment. However, both Cary Oil and BLT Investments, LLC have consented to the sale of the cash register system and the UST. Therefore, there is a basis for conveying such assets free and clear of liens under 11 U.S.C. § 363(f) with respect to such assets. The Trustee requests that the Court authorize the sale of these assets free and clear of all liens and that such liens be transferred to the sale proceeds.

WHEREFORE, Trustee respectfully prays the Court enter an order:

1. Approving the settlement as set forth in the Settlement Agreement;

2. Authorizing the Trustee to sell the new cash register system and the UST to the Dealer, free and clear of all liens, and transferring such liens to the sale proceeds; and
3. Granting such other relief as the Court deems just and proper.

RESPECTFULLY submitted, this the 25th day of January 2017.

NORTHEN BLUE, LLP

/s/ John Paul H. Cournoyer

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Counsel for the Trustee

**UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by automatic electronic noticing to the email address of record for the following parties:

William P. Miller Bankruptcy Administrator	Charles M. Ivey, III and Justin William Kay Counsel for Debtors
Brian Richard Anderson Counsel for Great State Bank	Daniel C. Bruton Counsel for BLT Investments, LLC
Nan E. Hannah Counsel for Cary Oil Company	Robert Paul Laney Counsel for McElwee Firm, PLLC
W. Walt Petit Counsel for Yadkin Bank	Scott E. Shealy Counsel for Citizens Fuel Co.
J. Marshall Shelton Counsel for David Kennedy	John H. Small Counsel for Sunhouse Petroleum, LLC

I hereby certify that I have this day served the foregoing by depositing a copy in the United States Mail, postage prepaid, as follows:

Shrinik, Inc. and Santoshkumar Patel
c/o Ashley Rusher
Blanco Tackabery
110 South Stratford Road, Suite 500
Winston-Salem, NC 27104-4299

This the 25th day of January 2017.

NORTHEN BLUE, LLP

/s/ John Paul H. Cournoyer
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Chapel Hill, NC 27515-2208
Telephone: 919-968-4441
Counsel for the Trustee

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement"), dated as of January __, 2017, is made by and between Tar Heel Oil II, Inc., by and through John Paul H. Cournoyer, chapter 11 trustee ("THO"), and Shrinik, Inc. and Santoshkumar Patel d/b/a College Park Convenience Store (collectively, the "Dealer").

WHEREAS, on or about August 8, 2014, THO and the Dealer entered into a certain agreement for the consignment sale of fuel (the "Supply Agreement");

WHEREAS, in August 2014, College Park Convenience Store, LLC, an entity that upon information and belief was owned by Arthur Lankford, entered into an Asset Purchase Agreement to sell real property located at 1204 River Street, Wilkesboro, NC 28697 ("Premises"), and certain other assets including "underground storage tanks and related equipment, fixtures, furnishings and cash registers, fuel pumps, signage and awning, and all other personalty on the premises" to Dealer.

WHEREAS, pre-petition, THO executed a Form UST-15 "Change of Ownership of UST System(s)" to transfer the ownership of underground storage tanks ("UST(s)") at the Premises to the Dealer, but it was rejected by DENR due to an incomplete notarization and failure to attach a bill of sale. Therefore, according to DEQ f/k/a DENR, the registration and ownership of the UST(s) at the Dealer's Premises continue to reflect the UST(s) as property of THO.

WHEREAS, THO filed a chapter 11 bankruptcy petition on March 4, 2016, and John Paul H. Cournoyer (the "Trustee") was subsequently appointed as THO's bankruptcy trustee.

WHEREAS, upon the appointment of the Trustee, THO modified its business from a consignment sale model to a wholesale model, and Dealer does not wish to continue doing business with THO;

WHEREAS, THO paid for an upgraded cash register system at the Dealer's Premises,

WHEREAS, the Dealer owes THO the sum of \$4,140.26 for petroleum products supplied prior to November 1, 2016;

WHEREAS, THO continues to hold legal title to the UST(s) at the Dealer's Premises, notwithstanding the pre-petition agreement to transfer such UST(s) to the Dealer;

WHEREAS, after discussion and negotiation, the parties agreed to resolve all outstanding issues between them pursuant to the terms outlined below.

NOW, THEREFORE, the Trustee and the Dealer hereby agree as follows:

1. The Supply Agreement shall be rejected pursuant to 11 U.S.C. § 365. Trustee shall file a Motion to Reject with the Bankruptcy Court upon execution of this Agreement, and shall deliver a letter to Dealer, addressed in blank, authorizing Dealer to purchase fuel from another fuel supplier pending court approval of the Motion to Reject.
2. The Dealer shall pay THO the sum of \$4,140.26 for petroleum products previously supplied;
3. The Dealer shall pay THO the sum of \$7,526.49 in exchange for the transfer of THO's interest in the new cash register system installed at the Dealer's Premises and UST(s) located at the Dealer's Premises.
4. THO shall deliver to Dealer a Bill of Sale for the new cash register system. Subject to the satisfaction of Dealer's obligation to remain a CITGO-branded site, as set forth below, THO warrants that it has good and marketable title to the new cash register system installed at the Dealer's Premises.
5. THO shall deliver to Dealer a Bill of Sale for the UST(s), along with a completed Form UST-15 and all records and testing reports and data maintained by THO with regard to the UST(s) located at the Dealer's Premises.
6. Dealer shall remain a CITGO-branded site until at least October 31, 2017. THO and Trustee will facilitate the transfer of the CITGO brand from Cary Oil to another CITGO-branded fuel supplier of Dealer's choice.
7. Dealer shall deliver to Trustee a Bill of Sale for the used cash register system removed from the Dealer's Premises.
8. Except for the obligations set forth in this Agreement, THO and the Dealer waive any and all claims against each other, of any nature, whether known or unknown, as of the date of the Agreement. As used herein, the term claim has the meaning ascribed to it in the Bankruptcy Code.
9. This Agreement is subject to approval by the Bankruptcy Court. Trustee shall file a Motion to Approve Settlement with the Bankruptcy Court upon execution of this Agreement.
10. To the extent not governed by the Bankruptcy Code, this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to rules governing the conflict of laws.

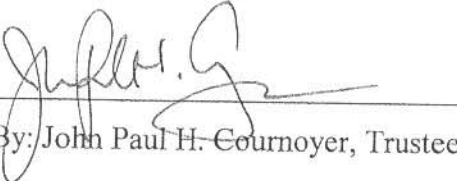
11. This Agreement may be executed in one or more counterparts (whether manually signed or by facsimile or other electronic means), each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement.

12. This Agreement may not be amended, changed, modified, altered or terminated unless the parties hereto agree in writing to such amendment, change, modification, alteration or termination.

13. The parties agree that the Bankruptcy Court shall retain the exclusive and sole jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement or the implementation or the breach hereof. The parties consent to the core jurisdiction of the Bankruptcy Court, to the constitutional authority of the Bankruptcy Court to enter a final judgment, and agree to have waived any right to a jury trial in connection with any disputes related to or arising out of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

TAR HEEL OIL II, INC.


By: John Paul H. Cournoyer, Trustee

SHRINIK, INC.

Santosh R Patel
By: Santoshkumar Patel, President

Santosh R Patel
Santoshkumar Patel d/b/a College Park
Convenience Store