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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
:   
HOTI ENTERPRISES, LP, and : Lead Case No. 10-24129 (RDD)  
HOTI REALTY MANAGEMENT CO., INC. :   
:   
Debtor. :   
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**OBJECTION OF GECMC 2007 C-1 BURNETT STREET, LLC  
TO MOTION TO DISMISS**

GECMC 2007 C-1 Burnett Street, LLC (“GECMC”), the holder of a first mortgage on the primary asset of Hoti Enterprises, LP (“Hoti” together with Hoti Realty Management Co., Inc., “Hoti Management”, the “Debtors”), certain real property located in Brooklyn, New York (the “Property”), by and through its counsel DLA Piper LLP (US), hereby files this objection (the “Objection”) to the Motion to Dismiss (the “Motion”) filed by Jonathan Foster (“Movant”). In support of this Objection, GECMC respectfully represents as follows:

**Preliminary Statement**

The Motion should be denied because, among other reasons, the Movant has not established “cause” to dismiss these cases under section 1112(b) of title 11 of the United States Code (the “Bankruptcy Code”), and in fact does not even cite to any relevant Bankruptcy Code or other statutory provision for support. Furthermore, it is not entirely clear whether the Movant

is a “party in interest” with standing to prosecute the Motion, or even be heard on any matter in these cases.

Rather than articulate any “cause” for dismissal of these cases, the Motion appears to question the validity of GECMC’s claim. GECMC owns a claim in excess of \$40 million, validly perfected and secured by the Property and related collateral, including cash collateral. GECMC’s loan is vastly undersecured – the Property has been previously valued by the Debtors at approximately \$14.5 million. GECMC has provided the Debtors and this Court with substantial documentation in support of its claim, in the context of various pleadings, including GECMC’s motion for relief from the automatic stay, GECMC’s motion for relief from section 543 of the Bankruptcy Code, GECMC’s response to the Debtors’ application to conduct an examination of GECMC under Bankruptcy Rule 2004, and GECMC’s timely-filed proof of claim. To date, there has been no objection to GECMC’s claim filed by any party in interest.

GECMC intends to file, in the very near term, a plan of reorganization that contemplates payment of allowed administrative and priority claims in full, and the transfer of the Property and other collateral to GECMC in full satisfaction of its secured claim. GECMC therefore submits that dismissal of these cases at this time would not be in the best interest of the estates.

### **Background**

1. On October 12, 2010 (the “Petition Date”), the Debtors filed their voluntary petitions under chapter 11 of the Bankruptcy Code.

2. GECMC holds a claim against Hoti in excess of \$40 million, which is secured by the Property and related collateral including cash collateral. GECMC filed a proof of claim on June 1, 2011, a copy of which is attached hereto as Exhibit A.

3. LNR Partners LLC, a Florida limited liability company, as successor to LNR Partners, Inc., a Florida corporation, is the manager of GECMC, has been given a power of attorney to act in GECMC's stead, serves as the special servicer of the loan to Hoti, and has full authority to act on all matters relating to these chapter 11 cases.

4. The Property is currently being operated by Barbara S. Odwak, as a state court-appointed receiver (the "Receiver").

### **Legal Analysis and Argument**

A. Movant has no standing to seek the relief requested.

5. As in preliminary matter, Movant is not a "party in interest" with standing to move to dismiss these cases under section 1112(b) of the Bankruptcy Code or otherwise. Section 1109(b) of the Bankruptcy Code provides a list of who can be a party in interest, and Movant does not fit into any of these categories.<sup>1</sup> The Movant purports to have filed the Motion as a "third party intervenor." The Movant has not filed a claim in these cases, nor is he listed in the Debtors' schedules as a creditor. Moreover, as of the date hereof, the Movant has not filed a notice of appearance in these cases. The signature block for the Motion says that he is a "secured party" but the Motion attaches no documents to support a any claim, nevermind a secured claim. In addition, the signature block says that the Movant is a "trustee" for the debtor Hoti Enterprises. As the Debtors are still debtors in possession, it is clear that Movant is not a trustee for the Debtors. There is therefore no discernable connection between the Movant and these estates, nor is there any identifiable interest that the Movant has in the outcome of these cases. The Movant therefore has no standing to seek the relief requested in the Motion.

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<sup>1</sup> Under section 1109(b) of the Bankruptcy Code, a "party in interest" includes "the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee."

B. Movant fails to cite to or show “cause” under section 1112(b).

6. Motions to dismiss are governed by section 1112(b) of the Bankruptcy Code,<sup>2</sup> which requires a court to dismiss or convert a case if a party in interest “establishes cause,” unless, however, there are “unusual circumstances” specifically identified by the court establishing “that the requested conversion or dismissal is not in the best interests of creditors and the estate....” See 11 U.S.C. § 1112(b)(1). Based on this provision, the moving party has the burden to establish “cause.” See In re Century/ML Cable Venture, 294 B.R. 9, 34 (Bankr. S.D.N.Y. 2003) (burden is on the movant to prove bad faith); In re Woodbrook Assocs., 19 F.3d 312, 317 (7th Cir. 1994) (“Where a motion to dismiss for cause is opposed, the movant bears the burden of proving by a preponderance of the evidence that cause exists for dismissal of the debtor’s bankruptcy case.”).

7. Section 1112(b)(4) contains a long list of what constitutes “cause”. This section, however, does not include what appears to be Movant’s chief argument: that GECCMC’s claim is somehow deficient. Thus, the Movant has failed to establish “cause”.

8. Further, GECCMC submits that dismissal of these cases at this point is not in the best interests of creditors. GECCMC is in the process of finalizing a Chapter 11 plan that will, among other things, pay allowed claims of administrative and priority creditors in full. In addition, under GECCMC’s plan, its liens will be satisfied by the transfer of the Property and related collateral to GECCMC. If these cases are dismissed, the estates will be harmed because GECCMC’s efforts to realize on its collateral will be delayed (as GECCMC will be required to continue state court foreclosure proceedings, which are more time consuming than the chapter 11 plan process), and administrative and priority creditors will not be paid. Thus, denying the

Motion and allowing GECMC to propose its chapter 11 plan would be in the best interests of the estates.

C. GECMC's claim is valid.

9. GECMC filed a proof of claim on June 1, 2011. There has thus far been no objection to the claim filed by the Debtor or any other party in interest. Unless a party in interest objects, GECMC's proof of claim is deemed allowed. See 11 U.S.C. § 502(a). GECMC submits that its claim is valid, and there no basis to disallow its claim, let alone dismiss these bankruptcy cases.

10. In addition, as described above, GECMC has provided the Debtors with a detailed description of how it acquired its claims, substantial documentation in support of its claim, and a link to a website (<http://www.sec.gov/edgar.shtml>) that provides additional documents relating to GECMC's loan. Similarly, these documents are publicly available to the Movant. In any event, GECMC submits that the Movant lacks standing to object to GECMC's claims, because Movant is not a party in interest.

11. To the extent the Motion alleges that GECMC has somehow been paid in full on account of its claim, those allegations are simply false. GECMC did receive a "Notice of Conditional Acceptance, Request Regarding Trustee Action, and a Final Statement of Account via Private Administrative Remedy No. LLD-031811-KREC" purportedly from or on behalf of the Debtor on or about March 21, 2011 (the "Notice of Conditional Acceptance"), which was incomprehensible and attached a check for \$1.00 made out to Keybank Real Estate Capital. A copy of the Notice of Conditional Acceptance is attached hereto as Exhibit B.

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<sup>2</sup> Movant cites to Bankruptcy Rules 7024 and 7001(2), and Federal Rules of Civil Procedure 8 and 12(b)(6), none of which are applicable to contested matters under Bankruptcy Rule 9014. The Motion also cites to several provisions of the New York Uniform Commercial Code that do not appear relevant to a motion to dismiss.

12. On April 11, 2011, GECCMC sent a letter to the Debtors denying any obligations with respect to the Notice of Conditional Acceptance, and returned the \$1.00 check. A copy of GECCMC's April 11, 2011 letter is attached hereto as Exhibit C.

13. GECCMC has not received any payments from the Debtor (or any other party) on account of its claim since on or about January 3, 2011, when GECCMC received some funds from the Receiver in accordance with the cash collateral order entered in these cases. Notwithstanding Movant's wholly unsubstantiated allegations, GECCMC's claim, in at least the amount set forth in GECCMC's proof of claim, remains unpaid.

WHEREFORE, GECCMC seeks entry of an order sustaining its objections, denying the Motion, and granting such other and further relief as is just and proper.

Dated: September 29, 2011  
New York, New York

**DLA PIPER LLP (US)**

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