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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
Zucker Goldberg & Ackerman, LLC,	:	Case No. 15-24585(CMG)
Debtor.	:	Honorable Christine M. Gravelle

OBJECTION OF MICHAEL J. ACKERMAN, ESQ. TO SPECIFIC PROVISIONS OF THE DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR AND CREDITOR COMMITTEE JOINT PLAN OF ORDERLY LIQUIDATION

Michael J. Ackerman, Esq. ("Ackerman"), a creditor of the Debtor, Zucker, Goldberg and Ackerman, LLC ("ZGA" or the "Debtor"), by and through his counsel, Davison, Eastman, Muñoz, Lederman & Paone, P.A., by James M. McGovern, Jr., Esq., hereby asserts this limited objection to the Joint Disclosure Statement and Plan of Orderly Liquidation which has been filed in support of the debtor and creditors committee Joint Plan of Orderly Liquidation (Docket Entry 782), for the following reasons:

STATEMENT OF MATERIAL FACTS

1. On August 3, 2015, ZGA the Debtor filed a voluntary petition for relief under Title 11 of the United States Code. The Debtor has remained in possession of its assets and management

of its affairs. Michael J. Ackerman, Esq. is the Managing Member of ZGA throughout the pendency of the bankruptcy and has functioned as the manager of the Debtor in possession.

2. On August 12, 2015, an Official Committee of Unsecured Creditors was formed (Docket Entry 78).

3. On March 9, 2007, the Debtors of ZGA and the Official Committee of Unsecured Creditors filed with the Court a Joint Plan of Orderly Liquidation which contained a proposed Disclosure Statement which accompanied the Plan (Docket Entry 782).

OBJECTIONS REGARDING EXAMINER'S REPORT

1. Michael J. Ackerman, Esq., urges this Court not to approve the Joint Disclosure Statement because the Statement fails to disclose information sufficient to allow a "reasonable investor typical of holders of claims or interests of relevant class to make an informed judgment about the plan..." 11 U.S.C. §1125 (a). Specifically, the Joint Disclosure Statement indicates that there exist certain claims against various parties including Mr. Ackerman and urges approval of a proposed plan of orderly liquidation by presupposing that these claims will be litigated and that there will be a successful outcome to the benefit of the holders of claims under the plan of liquidation. Creditors considering the proposed plan and assessing the value of these litigation claims against Michael Ackerman and others require a candid disclosure among other things of the following information:

a. That the claims against Michael Ackerman are likely without merit and have been effectively rebutted by the Ackerman Rebuttal to Examiner's Report which was filed in the ZGA Chapter 11 proceeding under Docket Entry 700. This rebuttal Statement is conspicuously absent from any discussion in the Joint Disclosure Statement.

b. Funding for the prosecution for this meritless litigation claims will result in a significant diversion of estate assets for payment of attorneys and other professionals and would take away funds which would otherwise be available for distribution to creditors. As indicated in the rebuttal of Michael Ackerman, this litigation presents a remote chance of success.

c. A report of the examiner, The Honorable Donald H. Steckroth filed at Docket Number 688 is hearsay, lacks evidential value and would not be admissible in any trial involving Michael Ackerman or any other parties.

d. The examiner lacks personal knowledge of any matters described accurately or inaccurately in the examiner's report.

e. The examiner's report as indicated in the rebuttal of Michael Ackerman contains factual inaccuracies and improperly founded legal conclusions.

2. The court should require disclosure of the Ackerman rebuttal to the examiner's report as part of the Joint Disclosure Statement.

OBJECTION REGARDING SUBSTANTIVE CONSOLIDATION

3. The proposed plan suggests that the estates have a claim for substantive consolidation which will be assigned to the Plan Administrator, who would then be able to pursue consolidation of the estate with 4S Technologies, a company which Michael Ackerman is a majority owner. This part of the disclosure plan gives the Plan Administrator discretion to proceed with such a course of action.

4. The Plan Administrator does not have the capacity to substantially consolidate 4S Technologies, with the estate, post confirmation.

5. Initially 11 U.S.C. §1123 (a)(5)(C) does authorize as part of a plan of reorganization and upon proving a meaningful, factual basis to do so that a bankruptcy court can substantially consolidate the estate with one or more persons or entities.

6. Post confirmation, it is not possible for any conclusive consolidation remedy to be granted, given that the debtor's estate ceases to exist upon confirmation of the plan. This conclusion is informed by long-standing precedents of the United States Supreme Court, which hold that substantive consolidation involves only the merger of a debtor's estate with the assets of one or more persons. Sampsell v. Imperial Paper and Color Corp., 313 U.S. 215, 219 (1941). The Third Circuit has observed that "the debtor's estate ceases to exist once confirmation has occurred..." (Resorts Int'l, Inc. Litig. Trust v. Price Waterhouse, 372 F.3d. 154, 164 (3rd Cir. 2004).

7. Practically speaking then it is impossible to consolidate the assets of a target defendant such as 4S Technologies with an estate of ZGA which no longer exists. For this reason, under the administration as indicated in the Joint Plan of Liquidation, the Plan Administrator cannot file suit against 4S Technologies, an entity in which Michael Ackerman holds an interest, seeking substantive consolidation. Moreover, the remedy of substantive consolidation is authorized by 11 U.S.C. §105 and, thus the bankruptcy court's post confirmation ability to authorize substantive consolidation is not authorized by the bankruptcy code.

THE TERMS OF THE PROPOSED PLAN THAT PURPORT TO "RESERVE" JURISDCTION OVER ALL CLAIMS BROUGHT BY THE PLAN ADMINISTRATOR ARE NOT ENFORCEABLE AND ARE INCONSISTENT WITH SUPREME COURT PRECEDENT

8. At page 13, the Joint Disclosure Statement provides that the Bankruptcy Court shall retain jurisdiction over all actions of the Plan Administrator – suggesting that the Bankruptcy Court

would be the forum where the Plan Administrator could bring state law claims, such as *alter ego* and piercing the corporate vail claim, against Ackerman. Under binding precedent, including the Supreme Court's decision in Stern v. Marshall, 564 U.S. 462 (2011), these claims, arising under state law, do not fall within this Court's "core" jurisdiction. Furthermore, neither the bankruptcy courts nor the district courts of the United States have exclusive subject matter jurisdiction over them. *Id.*

9. Ackerman objects to those provisions of the Joint Disclosure Statement and Proposed Plan that suggest that the Bankruptcy Court is the exclusive forum for litigation brought by the Plan Administrator. Ackerman specifically reserves its right to contest the subject matter jurisdiction of the Bankruptcy Court or the District Court in connection with any litigation brought against it.

10. Further, this Court should require the Joint Disclosure Statement to counsel creditors that there is no assurance that the Bankruptcy Court or the District Court will have subject matter jurisdiction over litigation claims asserted by the Plan Administrator.

THE PLAN PRESENTS AN IMPERMISSIBLE SCHEME TO ASSIGN TORT CLAIMS

11. The Court should not approve the Plan as a result of the Plan Administrator's inability to pursue claims by third party providers.

12. The definition section of the Plan of Liquidation provides in the following numerated paragraphs:

> 114. "Third Party Providers" means those providers of trade secrets to the Debtor, whose invoices were specifically itemized on the Debtor's invoices to its clients or whose services were paid in connection with the closing of real estate transfers.

115. "Third Party Providers Claim" means a Claim of a Third Party Provider against Persons other than the Debtor which seeks to impose liability against that Person as a result of misconduct of the Debtor (including, but not limited to, the claim that the Debtor should have held certain payments received for services provided by Third Party Providers in the Attorney Trust Account or disburse payments directly to the Third Party Provider).

116. "Third Party Provider Election Form" or "Third Party Provider Power-of-Attorney" means an election to be made by a Third Party Provider which authorizes the Plan Administrator to commence the Third Party Provider Claim in the name of a Third Party Provider. The Third Party Provider Election Form (which shall be filed as part of the Plan Supplement) will provide that any net proceeds recovered from such litigation will be shared pro rata among the General Unsecured Claims.

13. These three definitional sections are setting up a requirement of the Plan Administrator to file actions which are essentially tort claims under New Jersey state law. This Third Party Provider rubric, as indicated in the Plan of Liquidation is not for litigation arising from claims for a breach of contract by a party other than the Debtor. It can only be for claims based upon a breach of a duty owed to the Third Party Providers, which duty was breached by an individual other than the Debtor. This is the classic definition of a tort, rather than a breach of contract.

14. Since the Third Party Provider Claims are no more than an assignment of tort claims to the Plan Administrator, the Plan Administrator lacks standing to bring claims on behalf of the Third Party Providers. The public policy of the State of New Jersey is well settled in that it prohibits the assignment before judgment of business or personal injury tort claims. Costanzo v. Costanzo, 248 N.J.Super 116 (Law Div. 1991). The theories that are contemplated under the definitional sections as indicated above are tort claims and cannot be legally assigned to the Plan Administrator.

15. As a result of this well settled New Jersey state law, it is Michael Ackerman's position that the Plan Administrator has no standing to pursue claims under these sections of the Plan of Liquidation against him or any other non-debtor parties.

16. Recognizing this doctrine and realizing that no matter what format the Plan of Liquidation provides, the Third Party Provider Election Form or the Third Party Provider Power-of-Attorney is nothing more than a general assignment to the Plan Administrator of claims which of necessity must be tort claims of the creditors to the Administrator. This is barred by New Jersey state law. This Court should disallow the Third Party Provider process as indicated in the Plan of Liquidation.

CONCLUSION

Ackerman objects to the Joint Disclosure Statement as not adequate within the meaning of 11 U.S.C. §1125. At the very least, this Court should order that the Disclosure Statement include Ackerman's rebuttal to the Examiner's Report as an exhibit to the Disclosure Statement. Additionally, this Court should not approve the Plan Administrator' ability to bring an action for substantive consolidation and receivables. The Third Party Provider Claims should not be allowed to be assigned to the Plan Administrator and that portion of the Plan of Liquidation should not be approved. The Third Party Provider Plan does not create a situation where the Plan Administrator obtains standing to sue others on behalf of Third Party Providers.

Respectfully submitted,

By: */s/ James M. McGovern, Jr.*

JAMES M. MCGOVERN, JR., ESQ.

Dated: March 30, 2017