

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

STANLEY J. KOWALEWSKI and SJK
INVESTMENT MANAGEMENT,
LLC,

Defendants.

Civil Action Number
1:11-CV-0056-TCB

**NOTICE OF SETTLEMENT AND RECOVERY
OF \$100,000 FOR THE RECEIVER ESTATE**

S. Gregory Hays (“Receiver”), the court-appointed Receiver for SJK Investment Management, LLC (“SJK”), and the SJK Special Opportunities Fund (the “Special Opportunities Fund”) (collectively the “Receiver Estate”), files this Notice of Settlement and Recovery of \$100,000 for the Receiver Estate, showing the Court as follows:

1. Pursuant to Orders dated February 2, 2011[ECF No. 37] and March 8, 2011 [ECF No. 59] (the “Receivership Orders”), S. Gregory Hays was appointed as Receiver for Stanley J. Kowalewski (“Kowalewski”), SJK Investment Management, LLC (“SJK”), the SJK Special Opportunities Fund, LP (the “SOF”), and all of their assets. The receivership over Kowalewski and his assets was

terminated on September 30, 2011. (SJK, the SOF, and their assets are referred to collectively as the “Receiver Estate”).

2. The Receivership Orders grant the Receiver broad authority over the organization, management, control, and disposal of the assets of the Receiver Estate, including the authority to settle any claims of the Receiver Estate against third parties.

3. As set forth in the Receiver’s First Interim Report [ECF No. 55], at the time of the Receiver’s appointment, there was a \$600,000 balance on a January 29, 2010 Line of Credit Promissory Note (the “Note”) extended by the SOF to Combs Group, LLC (“Combs Group”). Payment on the Note was guaranteed by Kevan Combs and his wife, Susan Combs (the “Guarantees”). The SOF and the Combses also entered into a Pledge Agreement whereby the Combses pledged their interest in various entities to the SOF (the “Pledge”).

4. In investigating potential claims against Combs Group and the Combses, the Receiver learned that, in November 2010, SJK and Combs, Inc., an entity controlled by Kevan Combs, had entered into an AIA form of construction contract, which provided for the construction by Combs, Inc. of an office building to be located at 3674 Oak Ridge Road, Summerfield, North Carolina (the “Office”).

Contract”). Combs, Inc. claims that it was entitled to substantial additional payments under the Office Contract.

5. Also in connection with his investigation of potential claims, the Receiver reviewed sworn personal financial statements, appendices, and related information (the “Financial Statements”) provided by the Combses to the Receiver on a confidential basis.

6. After reviewing the Note, Guarantees, Pledge, Office Contract, Financial Statements, and other relevant information, the Receiver concluded that Combs Group and the Combses did not have sufficient assets to satisfy a judgment rendered against them; however, the Receiver continued to seek a meaningful recovery from Combs Group and the Combses.

7. After several months of negotiations, the Receiver, Combs Group, Combs, Inc., and the Combses entered into a Settlement Agreement and Release resolving all potential claims between them. Under the Settlement Agreement, Combs Group and the Combses have paid \$100,000 to the Receiver Estate. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

8. The \$100,000 obtained by the Receiver Estate is a significant recovery and the Receiver determined that it was in the best interests of the Receiver Estate

to enter into the Settlement Agreement instead of expending additional funds of the Receiver Estate to pursue a judgment against Combs Group and the Combses.

Respectfully submitted, this 18th day of December, 2013.

/s/ Thomas B. Bosch

J. David Dantzler, Jr.

Georgia Bar No. 205125

david.dantzler@troutmansanders.com

Thomas B. Bosch

Georgia Bar No. 068740

tom.bosch@troutmansanders.com

Natalie D. Sacha

Georgia Bar No. 558276

natalie.sacha@troutmansanders.com

TROUTMAN SANDERS LLP

5200 Bank of America Plaza

600 Peachtree Street, N.E.

Atlanta, GA 30308-2216

(404) 885-3000 (phone)

(404) 885-3900 (fax)

Attorneys for S. Gregory Hays, Receiver

CERTIFICATE OF COMPLIANCE OF LOCAL RULE 7.1D

I hereby certify that the foregoing has been prepared in a Times New Roman 14 point font, one of the font and point selections approved by the Court in Local Rule 5.1B.

/s/ Thomas B. Bosch _____

Thomas B. Bosch
Georgia Bar No. 068740

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF SETTLEMENT AND RECOVERY OF \$100,000 FOR THE RECEIVER ESTATE** was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to all counsel of record.

This 18th day of December, 2013.

/s/ Thomas B. Bosch _____

Thomas B. Bosch

Georgia Bar No. 068740

EXHIBIT A

EXECUTION COPY

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE, hereinafter referred to as the "Agreement," is made as of this 5th day of December, 2013, by and among S. GREGORY HAYS, the court appointed "Receiver" for the SJK SPECIAL OPPORTUNITIES FUND, LP, a Delaware limited partnership (the "SOF") and SJK INVESTMENT MANAGEMENT, LLC, a Delaware limited liability company ("SJK Investment"), THE COMBS GROUP, LLC, a North Carolina limited liability company (the "Borrower"), COMBS, INC., a North Carolina corporation, KEVAN R. COMBS, a citizen and resident of the State of North Carolina, and SUSAN L. COMBS, a citizen and resident of the State of North Carolina (each of Kevan R. Combs and Susan L. Combs being hereinafter referred to as a "Guarantor" and collectively the "Guarantors," and collectively referred to, along with the Borrower and Combs, Inc., as the "Combs Parties"). Any capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Loan Documents, as hereafter defined.

WHEREAS, the SOF made certain loans to the Borrower pursuant to that certain Line of Credit Promissory Note made by Borrower, dated January 29, 2010, in the maximum principal amount of One Million Dollars (\$1,000,000.00) (respectively, the "Loans" and the "Note");

WHEREAS, as a condition to the Loans and the SOF's acceptance of the Note, the Guarantors each executed that certain Guaranty in favor of the SOF, dated January 29, 2010 (the "Guaranty");

WHEREAS, as a further condition to the Loans and the SOF's acceptance of the Note, the Guarantors and the SOF executed that certain Pledge Agreement, dated January 29, 2010 (the "Pledge Agreement"), pursuant to which the Guarantors pledged, assigned, charged, mortgaged, delivered, and transferred to the SOF, and granted to the SOF, a continuing security interest in, all of the Guarantors' respective right, title, and interest in and to any and all of the Collateral as security for the satisfaction of the Obligations;

WHEREAS, the documents described in the above recitals to this Agreement, as modified and amended, if applicable, together with any UCC financing statements and other security instruments, if any, prepared or filed in connection therewith, are collectively referred to as the "Loan Documents";

WHEREAS, as of December 2, 2013, unpaid principal in the amount of \$600,000.00 remains outstanding and due under the Loan;

WHEREAS, in November 2010, SJK Investment and Combs, Inc. entered into an AIA form of construction contract, which provided for the construction by Combs, Inc. of an office building to be located at 3674 Oak Ridge Road, Summerfield, North Carolina (the "Office Contract");

WHEREAS, on January 26, 2011, SJK Investment unilaterally terminated the Office Contract, and as a consequence of such termination, the Office Contract provides that Combs, Inc. is entitled to receive certain payments from SJK Investment (the "Office Payments");

EXECUTION COPY

WHEREAS, as affiliates of Combs, Inc., it is the position of the Borrower and the Guarantors that they are entitled to set-off the Office Payments against the principal due under the Line of Credit Promissory Note and the Guaranty;

WHEREAS, S. Gregory Hays has been appointed as the Receiver for SJK Investment, the SOF, and all of their assets (collectively the "Receiver Estate") in *Securities and Exchange Commission v. Kowalewski, et al.*, Civil Action No. 1:11-cv-0056-TCB, United States District Court for the Northern District of Georgia, Atlanta Division (the "SEC Enforcement Action");

WHEREAS, the Combs Parties and the Receiver have reached a resolution of those claims described above and now wish to settle and compromise those claims on the terms set forth herein;

WHEREAS, Kevan Combs and Susan Combs, under penalty of perjury and as an inducement to the Receiver to enter into this Agreement, have provided the Receiver with personal financial statements, appendices thereto, and related information (the "Financial Statements");

WHEREAS, the Receiver, relying on his review of the Financial Statements, is satisfied that the Combs Parties do not have sufficient assets to satisfy a judgment rendered against them for the full amount due under the Loan Documents; and

WHEREAS, the Receiver has determined through his review of the Financial Statements and other relevant information that the terms of settlement and compromise set forth herein are in the best interest of the Receiver Estate;

NOW, THEREFORE, the Receiver (on behalf of himself, the Receiver Estate, the SOF, and SJK Investment) and the Combs Parties, in consideration of the mutual covenants contained herein and for such other good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby agree as follows:

PAYMENT AND RELEASES

1. The Receiver agrees to accept, in full settlement and satisfaction of the Obligations, the sum of \$100,000.00 (the "Payoff Amount") together with the following releases, but only if the Payoff Amount is received on or before 5:00 p.m. EST on December 6, 2013 (the "Closing Date"). If for any reason the Receiver does not receive the full Payoff Amount by the Closing Date, then this Agreement, including without limitation the Receiver's agreement to accept the Payoff Amount in full settlement and satisfaction of the Obligations, shall be void and of no further force and effect. In such event, the Borrower and the Guarantors shall remain liable to the Receiver for payment of the Obligations in accordance with the terms of the Loan Documents.

2. Effective and conditioned upon its receipt of the Payoff Amount, the Receiver, on behalf of himself, the Receiver Estate, the SOF, and SJK Investment, hereby CANCELS the Note, RELEASES AND TRANSFERS to the Guarantors the Pledged Equity Interests, RELEASES AND TERMINATES the security interest granted in the Collateral (and shall promptly terminate any UCC financing statements filed to perfect such security interest), and

EXECUTION COPY

RELEASES AND FOREVER DISCHARGES the Combs Parties (including without limitation, members, managers, officers, agents, employees, and representatives of the Combs Parties, if acting in such capacity and if applicable) and their respective heirs and assigns of and from any and all liability or obligation now accrued, or hereafter to accrue, under, relating in any way to or in connection with the Office Contract, the Loan Documents, or the Loans or otherwise on account of any and all causes of action, claims, demands and damages of any kind or nature whatsoever known or unknown, or that may hereafter develop in any way arising from, relating to or in connection with the Office Contract, the Loan Documents, or the Loan; provided, however, that this release shall not apply to claims arising from any breach by the Combs Parties of their respective obligations under this Agreement. Notwithstanding the foregoing, nothing herein is intended to nor should be construed to release any other person or entity that was in any way affiliated with Stanley J. Kowalewski, SJK Investment, or the SOF, or who worked on or provided services in connection with the investment offerings at issue in the SEC Enforcement Action.

3. Effective and conditioned upon the Receiver's receipt of the Payoff Amount, the Combs Parties do hereby RELEASE AND FOREVER DISCHARGE the Receiver, the Receiver Estate, the SOF and SJK Investment (including without limitation, members, managers, officers, agents, employees, and representatives of the foregoing, if acting in such capacity and if applicable) of and from any and all liability or obligation now accrued, or hereafter to accrue, under, relating in any way to or in connection with the Office Contract, the Loan Documents or the Loans or otherwise on account of any and all causes of action, claims, demands and damages of any kind or nature whatsoever known or unknown, or that may hereafter develop in any way arising from, relating to or in connection with the Office Contract, the Loan Documents or the Loan; provided, however, that this release shall not apply to claims arising from any breach by the Receiver, the Receiver Estate, the SOF and SJK Investment of their respective obligations under this Agreement.

MISCELLANEOUS PROVISIONS

4. The parties covenant and agree that no promises or inducements have been offered for this Agreement other than those set forth herein and that this Agreement is executed without reliance upon any other promises or representations. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital.

5. This Agreement was negotiated in good faith by the parties and reflects a settlement that was reached voluntarily after consultation by each of the parties with his, her, or its representative competent legal counsel. The Agreement has been jointly prepared by all the parties hereto, and neither this Agreement nor any provision(s) hereof shall be construed on the basis of any other purported preparation.

6. Each party shall be responsible for payment of its own attorney's fees and expenses.

7. This Agreement, and each and every term and provision hereof, shall be construed in accordance with the laws of the State of North Carolina without recourse to the conflict of law

EXECUTION COPY

provisions thereof. If any provision of this Agreement shall for any reason be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall, in such event, be construed as if such invalid or unenforceable provision had never been contained herein. The parties agree that the exclusive forum for any action to construe or enforce the terms of this Agreement shall be the United States District Court for the Northern District of Georgia, Atlanta Division.

8. From time to time after the payment of the Payoff Amount, the Receiver shall execute and acknowledge and furnish such additional instruments, documents, materials and information which the Combs Parties may reasonably request in order to effect the consummation of the transactions provided for in this Agreement.

9. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

10. This Agreement integrates the whole of all agreements and understandings of any sort between the Receiver and the Combs Parties concerning the subject matter of the Agreement and supersedes all prior negotiations, discussions, or agreements of any sort whatsoever, whether oral or written, concerning the subject matter of the Agreement.

11. The Combs Parties agree that the Receiver may file this Agreement in the SEC Enforcement Action.

[Remainder of This Page Left Intentionally Blank]

EXECUTION COPY

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above-written.




SUSAN L. COMBS



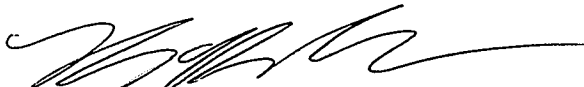
KEVAN R. COMBS

THE COMBS GROUP, LLC

By: 

Name: Kevan R. Combs
Title: Manager/Member

COMBS, INC.

By: 

Name: Kevan R. Combs
Title: President

SJK SPECIAL OPPORTUNITIES FUND L.P.

By: _____
Name: S. Gregory Hays
Title: Receiver

SJK INVESTMENT MANAGEMENT, LLC

By: _____
Name: S. Gregory Hays
Title: Receiver

EXECUTION COPY

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above-written.

SUSAN L. COMBS

KEVAN R. COMBS

THE COMBS GROUP, LLC

By: _____
Name: Kevan R. Combs
Title: Manager/Member

COMBS, INC.

By: _____
Name: Kevan R. Combs
Title: President

SJK SPECIAL OPPORTUNITIES FUND L.P.

By: _____
Name: S. Gregory Hays
Title: Receiver

SJK INVESTMENT MANAGEMENT, LLC

By: _____
Name: S. Gregory Hays
Title: Receiver