

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) Case No. 13-50728-JRS
)
JOVA/DANIELS/BUSBY, INC.,)
) CHAPTER 7
Debtor.)
)
_____)

MOTION FOR APPROVAL OF
JOINT STIPULATION AND SETTLEMENT AGREEMENT
BETWEEN TRUSTEE AND WELLS FARGO BANK

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), S. Gregory Hays, Chapter 7 Trustee for the estate of Jova/Daniels/Busby, Inc. (the “Trustee”), seeks approval of the Joint Stipulation and Settlement Agreement (the “Settlement Agreement”) between the Trustee and Wells Fargo Bank (“Wells Fargo”; together with the Trustee, the “Parties”).

Background

1. On January 14, 2013 (the “Petition Date”), Jova/Daniels/Busby, Inc. (the “Debtor”) filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above-styled bankruptcy case (the “Bankruptcy Case”).

2. On that same day, the Trustee was appointed the Interim Trustee in the Bankruptcy Case.

3. The Debtor is an architectural firm that is owner of, among other things: (i) those funds currently in the Debtor’s possession, including those that have been received by the Debtor prior to and since the Petition Date (the “Cash on Hand”); and

(ii) the Debtor's outstanding accounts receivables and related collateral as further described in the Security Agreement (as defined herein) (the "Accounts Receivables")

4. The Cash on Hand and the Accounts Receivables are subject to a first priority security interest by virtue of a Commercial Security Agreement dated August 31, 2004 (the "Security Agreement") executed by Debtor in favor of Wells Fargo as successor by merger to Wachovia Bank, NA, as successor by merger to South Trust Bank.

6. The Security Agreement is perfected by virtue of a UCC-1 Financing Statement filed and recorded with the Clerk of the Fulton County Superior Court on or about September 15, 2004, and a UCC Financing Amendment or continuation statement filed and recorded with the Clerk of the Fulton County Superior Court on or about June 8, 2009.

7. Wells Fargo does not hold a lien or security interest in any of the Debtor's personal property identified in Schedule B of the Debtor's bankruptcy schedules [Docket No. 9] other than the Cash on Hand and the Accounts Receivables.

8. The Debtor has scheduled the indebtedness owing to Wells Fargo in the total amount of \$300,374.66 (the "Wells Fargo Payoff").

Settlement Agreement

8. The Parties have entered into the Settlement Agreement, which is attached hereto as Exhibit "A," and incorporated herein by reference.

9. Pursuant to the terms of the Settlement Agreement, the Trustee will collect the Accounts Receivables for the benefit of the Debtor's bankruptcy estate and Wells Fargo.

10. Under the Settlement Agreement, Wells Fargo has agreed to provide a "carve-out" in favor of the Debtor's bankruptcy estate pursuant to Section 506(c) of the Bankruptcy Code as follows: (i) twenty-five percent (25%) of the Cash on Hand; (ii) forty percent (40%) of the first \$100,000 in Accounts Receivables collected; and (iii) twenty-five percent (25%) of the Accounts Receivables collected in excess of \$100,000, with such payments to the Trustee being treated as a reduction of the Wells Fargo Payoff.

Relief Requested

11. By this Motion, the Trustee seeks entry of an order, pursuant to Rule 9019 of the Bankruptcy Rules, granting this Motion, approving the terms of the Settlement Agreement, and authorizing the Trustee to consummate the Settlement Agreement.

12. Rule 9019(a) of the Bankruptcy Rules provides, in pertinent part, "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."

13. The standard in the Eleventh Circuit for determining whether to approve a compromise or settlement pursuant to Rule 9019(a) was articulated in Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544 (11th Cir. 1990):

When a bankruptcy court decides whether to approve or disapprove a proposed settlement, it must consider:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. at 1549.

14. Under the standard set forth above, the Trustee believes the Court should grant the Motion and approve the Settlement Agreement. The approval of the Settlement Agreement will allow the Debtor's bankruptcy estate to pay its administrative expenses and will increase the likelihood that the Trustee will be able to make a meaningful distribution to creditors. Absent the proposed settlement, the Debtor's bankruptcy estate will have minimal assets to administer and funds to distribute.

15. The Trustee asserts that the terms of the Settlement Agreement fall well within the range of reasonableness and will benefit the Debtor's bankruptcy estate, and therefore, respectfully requests that the Court grant the Motion.

WHEREFORE, having filed this Motion, the Trustee respectfully requests that the Court: (i) grant the Motion; (ii) approve the Settlement Agreement; and (iii) grant the Trustee such other and further relief as the Court deems just and proper.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

/s/ Sean C. Kulka

Sean C. Kulka

State Bar No. 648919

171 17th Street, NW

Suite 2100

Atlanta, Georgia 30363-1031

(404) 873-8682

Email: sean.kulka@agg.com

Attorneys for Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the following parties with a true and correct copy of the *Motion for Approval of Joint Stipulation and Settlement Agreement Between Trustee and Wells Fargo Bank* by depositing same in the United States mail, postage prepaid, addressed to:

David A. Geiger
Geiger Law, LLC
Suite 525
1275 Peachtree Street, NE
Atlanta, GA 30309

Office of the United States Trustee
362 Richard Russell Building
75 Spring Street, SW
Atlanta, GA 30303

Brian P. Hall
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592

This 19th day of February, 2013.

/s/ Jonathan H. Azoff
Jonathan H. Azoff

EXHIBIT A

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

In re:) Chapter 7
)
JOVA/DANIELS/BUSBY, INC.,) Case No. 13-50728-JRS
)
Debtor.)
_____)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement (the "Agreement"), dated as of February 19, 2013, is by and between S. Gregory Hays, as Chapter 7 Trustee for the estate of Jova/Daniels/Busby, Inc. (the "Trustee"), and Wells Fargo Bank ("Wells Fargo"; together with the Trustee, the "Parties").

WHEREAS, on January 14, 2013 (the "Petition Date"), Jova/Daniels/Busby, Inc. (the "Debtor") filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") commencing the above-styled bankruptcy case (the "Bankruptcy Case"); and

WHEREAS, the Debtor is an architectural firm that is the owner of, among other things: (i) those funds currently in the Debtor's possession, including those that have been received by the Debtor prior to and since the Petition Date (the "Cash on Hand"); and (ii) the Debtor's outstanding accounts receivables and related collateral as further described in the Security Agreement (as defined herein) (the "Accounts Receivables"); and

WHEREAS, the Cash on Hand and the Accounts Receivables are subject to a first

priority security interest by virtue of a Commercial Security Agreement dated August 31, 2004 (the "Security Agreement") executed by Debtor in favor of Wells Fargo as successor by merger to Wachovia Bank, NA, as successor by merger to South Trust Bank; and

WHEREAS, the Security Agreement is perfected by virtue of a UCC-1 Financing Statement filed and recorded with the Clerk of the Fulton County Superior Court on or about September 15, 2004, and a UCC Financing Amendment or continuation statement filed and recorded with the Clerk of the Fulton County Superior Court on or about June 8, 2009; and

WHEREAS, Wells Fargo does not hold a lien or security interest in any of the Debtor's personal property identified in Schedule B of the Debtor's bankruptcy schedules [Docket No. 9] other than the Cash on Hand and the Accounts Receivables; and

WHEREAS, the Debtor has scheduled the indebtedness owing to Wells Fargo in the total amount of \$300,374.66 (the "Wells Fargo Payoff"); and

WHEREAS, the Trustee was appointed as the Interim Trustee on January 14, 2013; and

WHEREAS, Wells Fargo has requested that the Trustee collect the Accounts Receivables, and in connection thereof has agreed to provide a "carve-out" in favor of the Debtor's bankruptcy estate pursuant to Section 506(c) of the Bankruptcy Code as follows: (i) twenty-five percent (25%) of the Cash on Hand; (ii) forty percent (40%) of the first \$100,000 in Accounts Receivables collected; and (iii) twenty-five percent (25%) of the Accounts Receivables collected in excess of \$100,000, as more fully set forth below, with such payments to the Trustee being treated as a reduction of the Wells Fargo Payoff; and

WHEREAS, the Trustee and Wells Fargo would both like to have the Accounts Receivables collected for the benefit of both the bankruptcy estate and Wells Fargo in the manner set forth in this Agreement, and the Parties mutually desire to settle this matter on that basis.

NOW, THEREFORE, the Trustee and Wells Fargo agree as follows:

1. The Trustee will seek to collect the Accounts Receivables.
2. As set forth in the recitals, Wells Fargo has a properly perfected first priority security interest in the Cash on Hand and the Accounts Receivables which is not subject to avoidance under the Bankruptcy Code, but does not hold a security interest in any of the Debtor's personal property identified in Schedule B of the Debtor's bankruptcy schedules [Docket No. 9] other than the Cash on Hand and the Accounts Receivables.
3. With respect to the Cash on Hand, there shall be a "carve-out" for the bankruptcy estate pursuant to Section 506(c) of the Bankruptcy Code of twenty-five percent (25%) of the Cash on Hand, with the payment to the bankruptcy estate reducing the Wells Fargo Payoff on a dollar for dollar basis. The Trustee shall distribute seventy-five percent (75%) of the Cash on Hand to Wells Fargo within fifteen (15) days of the entry of an order approving this Agreement.
4. With respect to the first \$100,000 of Accounts Receivables collected by the Trustee, there shall be a "carve-out" for the bankruptcy estate pursuant to Section 506(c) of the Bankruptcy Code of forty percent (40%) of the amount

collected, with the payment to the bankruptcy estate reducing the Wells Fargo Payoff on a dollar for dollar basis. The Trustee shall distribute sixty percent (60%) of the first \$100,000 of Accounts Receivables collected by the Trustee to Wells Fargo and such distributions shall be made to Wells Fargo every ninety (90) days after the entry of an order approving this Agreement.

5. With respect to Accounts Receivables collected in excess of \$100,000, there shall be a "carve-out" for the bankruptcy estate pursuant to Section 506(c) of the Bankruptcy Code of twenty-five percent (25%) of the amount collected up to the Wells Fargo Payoff, with the payment to the bankruptcy estate reducing the Wells Fargo Payoff on a dollar for dollar basis. The Trustee shall distribute seventy-five percent (75%) of the Accounts Receivables collected in excess of \$100,000 to Wells Fargo up to the amount of the Wells Fargo Payoff and such distributions shall be made to Wells Fargo every ninety (90) days after the entry of an order approving this Agreement.

6. All distributions made by the Trustee to Wells Fargo pursuant to this Agreement shall be made to:

Jill Stewart
Loan Adjustor
Wells Fargo
Credit Management Group
MAC G0128-086
171 17th Street, NW
Building 100, 8th Floor
Atlanta, GA 30363

7. The Trustee and Wells Fargo each agree to take any and all actions and execute any other documents as may be reasonably required by the Trustee or Wells Fargo to effect the purposes and intent of this Agreement. In particular, the Trustee agrees to file with the Court a motion pursuant to Rule 9019 of the Federal Rules Bankruptcy Procedure and all documents which may be necessary or advisable to obtain Court approval of this Agreement.
8. This Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.
9. The Parties to this Agreement each acknowledge and represent that they have been fully advised by their respective legal counsel of their rights and responsibilities under this Agreement, that they have read, know and understand completely the contents hereof, and that they have voluntarily executed the same. The Parties to this Agreement further hereby each acknowledge that they have had input into the drafting of this Agreement or, alternatively, have had an opportunity to have input into the drafting of this Agreement. Accordingly, in any construction to be made of this Agreement, it shall not be construed for or against any party, but rather shall be given a fair and reasonable interpretation, based on the plain language of the Agreement and the expressed intent of the Parties.


10. This Agreement contains the entire, final, complete, and exclusive agreement between the Trustee and Wells Fargo relating to the subject matter contained in this Agreement. There are no other representations, agreements, arrangements or understandings, oral or written, between the Trustee and Wells Fargo relating to the subject matter contained in this Agreement, which are not fully expressed in this Agreement.

STIPULATED AND AGREED to this 19th day of February, 2013.

ARNALL GOLDEN GREGORY LLP

SMITH, GAMBRELL & RUSSELL, LLP

By: _____


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Attorneys for Wells Fargo Bank