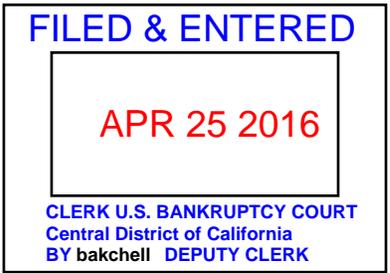


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Victor A. Sahn (CA Bar No. 97299)
vsahn@sulmeyerlaw.com
Daniel A. Lev (CA Bar No. 129622)
dlev@sulmeyerlaw.com
Asa S. Hami (CA Bar No. 210728)
ahami@sulmeyerlaw.com
SulmeyerKupetz
A Professional Corporation
333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
Telephone: 213.626.2311
Facsimile: 213.629.4520



CHANGES MADE BY COURT

Special Counsel for Plan Agent
Sam S. Leslie

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

SULMEYERKUPETZ, A PROFESSIONAL CORPORATION
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL 213.626.2311 • FAX 213.629.4520

In re
ART AND ARCHITECTURE BOOKS OF
THE 21st CENTURY, a California
corporation,

Debtor.

Case No. 2:13-bk-14135-RK

Chapter 11

ORDER DISAPPROVING AND DENYING WITHOUT PREJUDICE “STIPULATION BETWEEN PLAN AGENT AND STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT REGARDING RELEASE OF ANY LIEN OF THE STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT AGAINST PROCEEDS OF THE SALE OF THE BEVERLY HILLS PROPERTY”

[Stipulation at Dkt. No. 1928]

[No Hearing Required]

Pending before the court is the “Stipulation Between Plan Agent and State of California Employment Development Department Regarding Release of Any Lien of The State of California Employment Development Department Against Proceeds of The Sale of The Beverly Hills

1 Property” (“Stipulation”), ECF 1928, made by and between Sam S. Leslie, solely in his capacity
2 as the Plan Agent under the Modified Second Amended Plan of Reorganization of Official
3 Committee of Unsecured Creditors (“Plan”) in the above-captioned case (“Plan Agent”), through
4 his Special Counsel, Victor A. Sahn of SulmeyerKupetz, A Professional Corporation, on the one
5 hand, and the State of California Employment Development Department (the “EDD,” and,
6 together with the Plan Agent, the “Parties”), through its employee, Tax Administrator I Andria
7 Rodriquez. The court, having reviewed and considered the Stipulation, and good cause appearing
8 thereof,

9 **IT IS HEREBY ORDERED** that the Stipulation as proposed is DISAPPROVED AND
10 DENIED WITHOUT PREJUDICE for the following reasons.

- 11 1. There appears to be a typographical error in the Stipulation. Paragraph 5, page 4 of
12 the Stipulation provides that, “Notwithstanding the payment plan identified in
13 paragraph 3, above, in no event will the Plan Agent make any distributions to
14 allowed holders of Class 5 prepetition unsecured claims against the Debtor until
15 such time as the claim to the EDD addressed in this Stipulation is paid in full.” Per
16 the confirmed Plan, ECF 1859, Class 5 includes the Plan treatment for Westminster
17 Finance, Inc.’s secured claim. Plan at 27-31. Class 7 includes the Plan treatment
18 for general unsecured claims. *Id.* at 31-32. The Stipulation refers to “Class 5
19 prepetition unsecured claims” which apparently does not mean the Class 5 secured
20 claim of Westminster Finance, but Class 7 general unsecured claims. The
21 Stipulation cannot be approved unless this error is corrected.
- 22 2. To the extent the Stipulation seeks to affect and alter the Plan treatment for Class 5
23 (Westminster Finance, Inc.’s secured claim), the Stipulation seeks to improperly
24 modify the confirmed Plan under the Bankruptcy Code. Specifically, 11 U.S.C. §
25 1127(b) expressly provides that,

26 The proponent of a plan or the reorganized debtor may modify such
27 plan at any time after confirmation of such plan and before
28 substantial consummation of such plan, but may not modify such
plan so that such plan as modified fails to meet the requirements of
sections 1122 and 1123 of this title. Such plan as modified under

1 this subsection becomes the plan only if circumstances warrant such
2 modification and the court, **after notice and a hearing**, confirms
3 such plan as modified, under section 1129 of this title.

4 (Emphasis added). If the Stipulation meant to modify Class 5 secured claimant
5 Westminster Finance's rights under the confirmed plan, then this would modify the
6 terms of the confirmed plan requiring court approval pursuant to 11 U.S.C. §
7 1127(b). The Stipulation is unclear and ambiguous as to which creditor class's
8 rights are affected by it and may not be approved until this is clarified.

9 3. To the extent the Stipulation seeks to affect and alter the Plan treatment for Class 7
10 general unsecured claims, the court notes that the confirmed Plan provides: "Each
11 holder of an allowed Class 7 claim will receive such holder's Pro Rata share of the
12 Post-Confirmation Debtor's cash that remains after (i) making payment in full (or
13 the establishment of adequate reserves to make such payment) to the holder of any
14 allowed claim entitled to greater priority under the Plan, including Priority Tax
15 Claims and Administrative Expenses, and (ii) the payment in full (or the
16 establishment of reserves to make such payment) of the Post-Confirmation Debtor
17 and the Plan Trust's obligations and expenses arising on or after the Effective Date
18 . . ." Plan at 31. It appears that the Stipulation was intended to effectuate an
19 installment payment agreement between the Plan Agent and EDD for payment of
20 EDD's tax claims over the next 34 months in full satisfaction of such claims, which
21 were apparently the subject of its proof of claim, Claim No. 26-1, in the total
22 amount of \$144,355.02, of which \$116,937.51 is claimed to be unsecured priority
23 and \$27,417.51 is claimed to be general unsecured. To effectuate this agreement,
24 the Stipulation contemplates a delay of payment to Class 7 general unsecured
25 claims by this 34 month period for the EDD installment payment agreement to be
26 performed. While the Plan contemplates that Class 7 general unsecured claims are
27 to be paid after the payment of priority tax claims, the Plan did not contemplate an
28 additional 34-month delay in the payment of Class 7 general unsecured claims.
Nothing in the Stipulation indicates that this 34-month delay has a reasonable basis

SULMEYERKUPETZ, A PROFESSIONAL
CORPORATION
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL 213.626.2311 • FAX 213.629.4520

SULMEYERKUPETZ, A PROFESSIONAL
CORPORATION
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL 213.626.2311 • FAX 213.629.4520

1 in fact (i.e., why should general unsecured creditors wait an additional 34 months
2 to be paid any distribution in this case?). The Stipulation also lumps the EDD's
3 priority and general unsecured tax claims together, but nothing in the Stipulation
4 addresses whether part of the EDD's tax claims being paid under the installment
5 payment agreement includes the general unsecured claims of the EDD, which if
6 this were the case, would be giving it preferential treatment other Class 7 general
7 unsecured claims. The Stipulation asserts that it is a resolution of the disputes
8 between the Plan Agent and the EDD regarding the latter's claimed secured status
9 of its tax claims as indicated by the pending tax lien motion to disallow EDD's
10 secured tax claims (Docket No. 1887), but if this is a compromise of such a
11 controversy, there is no factual basis to support the reasonableness of any
12 compromise, i.e., there is no evidence showing that the EDD has a reasonable
13 factual and legal basis to assert that its claims are secured. See Fed. R. Bankr. P
14 9019; 11 U.S.C. § 545(2) (statutory liens such as the claimed EDD tax liens must
15 be perfected as to a hypothetical bona fide purchaser pursuant to 26 U.S.C. § 6323
16 or similar provision of state or local law; the EDD proof of claim, Claim No. 26-1,
17 refers to the tax claims as unsecured, but the Stipulation refers to recordation of
18 state tax lien notices between 2009 and 2012, but copies were not attached to the
19 Stipulation or proof of claim); Fed. R. Bankr. P. 9019). Given the potential
20 prejudice to the rights of Class 7 general unsecured creditors under the Plan if the
21 Stipulation is approved, given the concerns raised by the court in this order, and
22 lack of information showing the reasonableness of the compromise reflected in the
23 Stipulation, the court will require the Parties to the Stipulation to seek approval of
24 the Stipulation with notice to all general unsecured creditors by a written motion
25 noticed for hearing pursuant to Local Bankruptcy Rule 9013-1(d).

- 26 4. Lastly, the court notes that the Stipulation was not signed on behalf of the EDD, an
27 entity party, by an attorney. Instead, an employee of the EDD, Tax Administrator I
28 Andria Rodriguez, who does not appear to be a licensed attorney (since no state bar

SULMEYERKUPETZ, A PROFESSIONAL
CORPORATION
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL 213.626.2311 • FAX 213.629.4520

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

number for her was provided), signed the Stipulation on behalf of the EDD in violation of Local Bankruptcy Rule 9011-2(a), which provides in pertinent part that “. . . any [] unincorporated association . . . may not file a petition or otherwise appear without counsel in any case or proceeding, except that it may file a proof of claim, file or appear in support of an application for professional compensation, or file a reaffirmation agreement, if signed by an authorized representative of the entity.). The Stipulation, which is not one of the excepted pleadings under Local Bankruptcy Rule 9011-2, may not be filed with the court on behalf of an entity party, such as the EDD, unless it is signed on its behalf by an attorney in compliance with Local Bankruptcy Rule 9011-2. Thus, the Stipulation may not be approved in its current form on this basis as well.

IT IS SO ORDERED.

###

Date: April 25, 2016



Robert Kwan
United States Bankruptcy Judge