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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
AOG ENTERTAINMENT, INC., *et al.*,[1]	:	Case No. 16-11090 (SMB)
Debtors.	:	(Jointly Administered)

OBJECTION OF SIMON ROBERT FULLER TO SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR AOG ENTERTAINMENT, INC. AND ITS AFFILIATED DEBTORS

Simon Robert Fuller ("Mr. Fuller"), by and through his undersigned counsel, files this objection (the "Objection") to confirmation of the *Second Amended Joint Chapter 11 Plan of Reorganization for AOG Entertainment, Inc. and its Affiliated Debtors* [Docket No. 294] (the "Plan"), and respectfully states as follows:[2]

[1] A list of the Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number is attached as Schedule 1 to the Declaration of Peter Hurwitz, President of Certain Debtors, in Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 3] and at http://www.kccllc.net/AOG. The Debtors' executive headquarters are located at 8560 West Sunset Boulevard, 8th Floor, West Hollywood, CA 90069.

[2] The deadline to file objections to confirmation of the Plan was September 14, 2016 at 4:00 p.m. EST. The Debtors agreed to extend Mr. Fuller's deadline to file an objection until September 15, 2016 at 5:00 p.m. EST.

PRELIMINARY STATEMENT

1. The Plan cannot be confirmed because it (i) violates the absolute priority rule, (ii) is not fair and equitable, and (iii) improperly substantively consolidates the Debtors' assets and liabilities for Plan distribution purposes.

2. Moreover, confirming the Plan before Mr. Fuller has had a full and fair opportunity to conduct a 2004 examination, a right to which he is statutorily entitled, would cause him extreme prejudice. Confirmation would effectively moot Mr. Fuller's Motions, which were fully briefed and argued more than three weeks ago. Such a result is inequitable, and confirmation of the Plan must be denied.

BACKGROUND

3. Mr. Fuller is the largest unsecured creditor in these chapter 11 cases with a claim in excess of $10 million[3] against Debtor 19 Entertainment Limited ("19 Entertainment"). Mr. Fuller's claim arises from consulting services he provided to 19 Entertainment in connection with, *inter alia*, the "IDOL"-branded shows ("IDOLS") and "So You Think You Can Dance" ("SYTYCD").

4. Mr. Fuller is a former director and chief executive officer of 19 Entertainment, and the creator of IDOLS and SYTYCD. In January 2010, Mr. Fuller left his director and officer positions and entered into a long-term creative services agreement with 19 Entertainment. Specifically, pursuant to that certain Consultancy Deed, dated January 13, 2010, 19 Entertainment engaged Mr. Fuller to provide services, including executive producer services, with respect to the IDOLS and SYTYCD programs. In consideration for providing these services, Mr. Fuller was to receive, among other things, a profit share from IDOLS and

[3] Mr. Fuller reserves all rights with respect to the amount, basis, and priority of his claim(s) against 19 Entertainment and any other Debtor.

SYTYCD for the life of the programs, so long as Mr. Fuller continued to provide consulting services for such programs.

5. On April 28, 2016, the above-captioned debtors (the "Debtors") filed petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

6. On August 2, 2016, Mr. Fuller filed his Ex Parte *Motion for Order Authorizing Simon Robert Fuller to (A) Conduct a 2004 Examination of AOG Entertainment, Inc. and its Debtor and Non-Debtor Affiliates, and (B) Seek Related Document Production* [Docket No. 286] (the "2004 Motion"), in which Mr. Fuller seeks to conduct an examination of the Core Entities and related document production in connection with the Prepetition Loans and UK Audit (as those terms are defined in the 2004 Motion).

7. On August 4, 2016, the Court entered an order (the "Order") approving the Debtors' disclosure statement, scheduling a hearing on confirmation of the Plan for September 22, 2016, and setting a deadline of September 14, 2016 at 4:00 p.m. (prevailing Eastern Time) to object to confirmation (the "Objection Deadline") [Docket No. 292].

8. Also on August 4, 2016, the Debtors filed (i) the Plan and (ii) the *Disclosure Statement for Second Amended Joint Chapter 11 Plan of Reorganization for AOG Entertainment, Inc. and its Affiliated Debtors* [Docket No. 295] (the "Disclosure Statement").

9. On August 12, 2016, Mr. Fuller filed a motion, on shortened notice, to extend the deadline to challenge certain stipulations (the "Challenge Deadline") set forth in the order approving debtor in possession financing on a final basis [Docket No. 308] (the "Extension Motion" and, together with the 2004 Motion, the "Motions"). A hearing on the Motions was

held on August 23, 2016 (the "Hearing"), and the Court reserved judgment. As of the date hereof, the Court has not entered a judgment on either Motion.[4]

OBJECTION

A. The Plan Violates the Absolute Priority Rule

10. If the Court grants the Motions, Mr. Fuller will commence an investigation of the Debtors' prepretition conduct, as described in greater detail in the Motions and during the Hearing. Mr. Fuller will then determine whether grounds exist to commence an adversary proceeding to, *inter alia*, avoid the Prepetition Loans (as defined in the 2004 Motion).

11. Such claims, if successful, would significantly impede the Debtors' ability to consummate the Plan. Specifically, the Plan contemplates that the Debtors' First Lien Lenders and Second Lien Lenders (as defined in the Plan) will receive the equity in the newly-formed holding company that will own the equity in the reorganized Debtors.[5] However, if the Prepetition Loans are avoided with respect to 19 Entertainment (which is the focus of Mr. Fuller's investigation), there would be no legal basis to distribute equity in reorganized 19 Entertainment to the Debtors' prepetition lenders. Thus, without first ruling on the Motions, the Debtors cannot demonstrate that the Plan satisfies the absolute priority rule under Bankruptcy Code section 1129(b)(2)(B)(ii).[6]

B. The Plan is Not Fair and Equitable

12. Furthermore, the Debtors are unable to satisfy the cram down requirements under Bankruptcy Code section 1129(b)(1). As the Debtors acknowledge in the Plan, they will be

[4] On September 8, 2016, counsel to Mr. Fuller sent a letter to the Court respectfully requesting that the Court enter an order on the Motions as soon as possible so that Mr. Fuller's rights are not prejudiced.

[5] Plan, §§ 5.3(a)(2), 5.4(a).

[6] *See, e.g.*, *In re RAMZ Real Estate Co., LLC*, 510 B.R. 712 (Bankr. S.D.N.Y. 2014) (denying confirmation of debtor's plan because it violated the absolute priority rule).

forced to seek "cram down" because there will be at least two classes that reject the Plan.[7]

Bankruptcy Code section 1129(b)(1)

> provides that, in the event an impaired class does not vote in favor of a plan, but all other requirements of 1129(a) are satisfied, then the Court may only confirm the plan if it "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan."[8]

13. Where a plan is not fair and equitable, or discriminates unfairly against an impaired non-accepting class, confirmation must be denied.[9]

14. Here, the Plan discriminates unfairly against Class 5. First, Mr. Fuller, a Class 5 claim holder, has yet to begin his 2004 examination, which will determine whether equity in 19 Entertainment may be distributed under the Plan to the prepetition lenders. Second, the Motions are still pending. Without conducting an examination, it is impossible for Mr. Fuller to determine whether (i) any claims exist against the Debtors or prepetition lenders, (ii) the Plan's distribution of equity interests in 19 Entertainment is proper, or (iii) if it is even proper for 19 Entertainment to be a debtor in bankruptcy. Permitting the undecided Motions to simply be mooted by confirmation of the Plan would cause Mr. Fuller extreme prejudice, and would frustrate his ability to determine if Bankruptcy Code section 1129(b)(1) is satisfied.

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[7] Plan, § 6.3 ("Because certain Classes are deemed to have rejected this Plan, the Debtors will request confirmation of this Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code with respect to such Classes."); Plan, § 4.3(b) (listing classes that are impaired, are deemed to reject the Plan, and are therefore not entitled to vote on the Plan).

[8] *In re Charter Communications*, 419 B.R. 221, 267 (Bankr. S.D.N.Y. 2009) (quoting 11 U.S.C. § 1129(b)); *see also In re Worldcom, Inc.*, No. 02-13533, 2003 WL 23861928 (Bankr. S.D.N.Y. 2003) ("This procedure is known as 'cram down' as it allows the Court . . . to cram down the plan notwithstanding objections as long as the Court determines that the plan is 'fair and equitable' and does not 'discriminate unfairly' with respect to the dissenting classes.").

[9] *See, e.g., In re Fur Creations by Varriale, Ltd.*, 188 B.R. 754, 761-62 (Bankr. S.D.N.Y. 1995) (denying confirmation where debtor's plan was not "fair and equitable").

C. The Plan Improperly Substantively Consolidates the Debtors' Assets and Liabilities for Plan Distribution Purposes

15. Finally, Mr. Fuller objects to the substantive consolidation of the Debtors' assets and liabilities for purposes of distribution under the Plan. Section 2.2 of the Plan provides that "[t]he Plan groups the Debtors together solely for purposes of describing treatment under the Plan, confirmation of the Plan and ***making Plan Distributions*** in respect of Claims against and Interests in the Debtors under the Plan."[10]

16. In the Second Circuit, "substantive consolidation is appropriate when: (i) 'creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit;' or (ii) 'the affairs of the debtors are so entangled that consolidation will benefit all creditors.'"[11] The debtor bears the burden of proving that substantive consolidation is appropriate.[12] A primary concern of substantive consolidation is whether creditors will be negatively affected.[13] Where a debtor does not sufficiently demonstrate that creditors are treated appropriately as a consequence of consolidation, consolidation should be denied.[14]

17. Here, the Debtors have not even attempted to show that substantive consolidation is appropriate. And even if the Debtors attempted to demonstrate that substantive consolidation is appropriate, they would be unable to do so under *Augie/Restivo* until the Motions are adjudicated. Without having conducted the investigation described in the Motions, it is

[10] Plan, § 2.2 (emphasis added).

[11] *In re Jennifer Convertibles, Inc.*, 447 B.R. 713, 723 (Bankr. S.D.N.Y. 2011) (quoting *In re Augie/Restivo Baking Co.*, 860 F.2d 515, 518 (2d Cir. 1988)); *see also In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 763,64 (Bankr. S.D.N.Y. 1992) (applying the same test from *Augi/Restivo*).

[12] *Id*. ("the burden of proving the appropriateness of substantive consolidation is on the Debtors").

[13] *Id*. ("It is well accepted that substantive consolidation is a flexible concept and that a principal question is whether creditors are adversely affected by consolidation and, if so, whether the adverse effects can be eliminated.").

[14] *Id*. at 723-24 (denying confirmation of the plan as to certain debtors where the debtors failed "to establish that substantive consolidation [was] appropriate with respect to the treatment of a small number of creditors").

impossible for Mr. Fuller, or any other party, to analyze whether 19 Entertainment's assets should be consolidated with the Debtors' other assets under the Plan. It would therefore be patently improper, and Mr. Fuller would face extreme prejudice, if the Debtors' assets and liabilities are substantively consolidated, and distributions under the Plan are made before the Motions have been decided.

18. Mr. Fuller reserves the right to supplement this objection and raise additional arguments at the Confirmation Hearing.

WHEREFORE, Mr. Fuller respectfully requests that the Court deny confirmation of the Plan or, in the alternative, adjourn the Confirmation Hearing until after adjudication of the Motions, and grant Mr. Fuller such other and further relief as this Court deems just and proper.

Dated: September 15, 2016
New York, New York

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