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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re: **TECHNOLOGY PROPERTIES LIMITED LLC, fka TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fka TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,** Debtor.	Case No. 13-51589-SLJ-11 Chapter 11 Date: October 2, 2014 Time: 3:00 p.m. Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113 Judge: Honorable Stephen L. Johnson

COMMITTEE'S OPPOSITION TO CREDITOR CHARLES H. MOORE'S MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION

The Official Committee Of Unsecured Creditors (the "Committee") in the bankruptcy case of Technology Properties Limited LLC (the "Debtor" or "TPL") hereby submits its opposition to CREDITOR CHARLES MOORE'S MOTION TO APPOINT A CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION (the "Motion") filed by Charles Moore ("Mr. Moore"). As set forth below, the Motion seeks the appointment of a Chapter 11 trustee so that new management can be appointed, although the Committee has already obtained that goal through a joint plan with the Debtor agreeing to new management appointed and controlled by the Committee. In requesting appointment of a chapter 11 trustee, the Motion fails to establish a single criterion required for such extraordinary

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1 relief. Accordingly, the Motion should be denied in full.

I. THE MOTION

1. The Motion submits that, pursuant to 11 U.S.C. § 1104, "this Court should and must enter its order directing the appointment of a Chapter 11 Trustee and removing debtor-in-possession Daniel Leckrone." [CREDITOR CHARLES H. MOORE'S POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION (the "P&A") p.1:3-5]. Importantly, the Motion acknowledges that Mr. Leckrone "has recently resigned all positions with Debtor TPL: we have here a Chapter 11 case in which the debtor-in-possession has dispossessed himself from the Debtor." [*Id*. p.1:24-26]. In conjunction with the Motion, Mr. Moore has proposed the MOORE MONETIZATION PLAN OF REORGANIZATION DATED AUGUST 28, 2014 [D.E. 519] (the "Moore Plan") which is dependent on the appointment of a chapter 11 trustee as proposed by the Motion.

II. RELEVANT BACKGROUND

2. The Court is well-advised of the history of the Debtor and the acrimonious relationship between it and the Committee throughout the pendency of this bankruptcy case which has resulted in, among other things, the Committee's filing of a motion to terminate the exclusive period by which only the Debtor may file a plan, a motion to appoint a chapter 11 trustee and for a finding of contempt [D.E. 313] (the "Committee Trustee Motion"), and a motion requesting standing and authority to prosecute claims against certain insiders and affiliates of the Debtor on behalf of the bankruptcy estate [D.E. 360] (the "Derivative Standing Motion"), in addition to two competing disclosure statements and plans of reorganization.

3. Since the filing of its most recent plan, the Committee has continued to negotiate assiduously and extensively with the Debtor, culminating in, initially, a certain Term Sheet executed by the parties on July 18, 2014 (the "Term Sheet") outlining the terms of a joint plan, and ultimately, the filing of the JOINT PLAN OF REORGANIZATION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (DATED SEPTEMBER 17, 2014) [D.E. 539] (the "Joint Plan")[1]. Among

[1] The Debtor and the Committee filed the Joint Plan to update and amend certain information in their JOINT PLAN OF REORGANIZATION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (DATED SEPTEMBER 4, 2014) [D.E. 524].

other things, the Joint Plan provides for the following:

a) Subordination of the claims of Mr. Leckrone and his wholly owned companies Alliacense Limited, LLC ("Alliacense") and Interconnect Portfolio LLC, in Class 7; subordination of claims asserted by insider investors in either Class 6C or Class 7; and subordination of a portion of incentive compensation claims of insiders in Class 6B, all behind general unsecured claims. [Joint Plan sec. V-B, sec. V-E:V-H].

b) Appointment of a board (the "TPL Board") consisting of two Committee members, which shall act as a fiduciary of TPL post-confirmation (the "Reorganized Company") and have the responsibility to approve major company actions. [Joint Plan sec. VII-B].

c) The removal and replacement of Mr. Leckrone with Arockiyaswamy Venkidu as CEO and Responsible Person of the Reorganized Company to run its business operations subject to the advice, consent and direction of the TPL Board. [Joint Plan sec. VII-B].

d) Termination of Mr. Leckrone as manager and Chairman of the Debtor, as a member of the PDS Management Committee, and prohibition against his exercise of any supervisory, managerial, officer or decision making role for TPL, until administrative, priority and general unsecured claims are paid in full under the Plan. [Joint Plan sec. VII-B].

e) Appointment of a plan agent by the TPL Board, who will act independently to investigate potential causes of action, to administer a trust account for creditors and to make distributions on allowed claims. [Joint Plan sec. VII-C]

f) A procedure to remove and replace the CEO. [Joint Plan sec. VII-H].

g) Assumption of the Settlement Agreement dated January 23, 2013, by and among TPL, Mr. Moore, Patriot Scientific Corporation, Phoenix Digital Solutions LLC (the "January 2013 Agreement"). [Joint Plan sec. VIII-A].

4. The reason the Committee endeavored to such great lengths to reach agreement on the Term Sheet and the Joint Plan is evident - it offers the most reasonable, cost-effective means for payment to creditors. Mr. Leckrone's secured claim alone, which is subordinated in treatment pursuant to the Joint Plan, exceeds $4.8 million and would need to be addressed – likely through extensive and costly litigation - before payments to unsecured creditors could be made. Another secured creditor has agreed to distributions to unsecured creditors before it is fully paid on its secured claim. The Committee believes that the claims of insiders would substantially dilute and severely delay recovery by unsecured claimants and that many, if not all, of the claims of insiders would also require extensive litigation. This is evidenced by and was one impetus behind the filing of the Derivative Standing Motion, requesting authority to investigate and prosecute claims against

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insiders and affiliates of Mr. Leckrone. In the Joint Plan, these insiders have agreed to subordinate their claims to the claims of non-insider unsecured claimants.

5. Similarly, while the Court expressed much concern of the actions of the Debtor at the hearing on the Committee Trustee Motion, the Court indicated that it did not believe that sufficient evidence had been presented. Presentation of such evidence would require substantial discovery and litigation at the expense of the estate. While the Committee is not adverse to engaging in litigation if absolutely necessary, it is cognizant that lengthy and costly discovery and litigation, without any certainty of success as is inherently the case with litigation, would substantially delay any recoveries to unsecured creditors and could even ultimately prove to be fruitless. Indeed, continued delay is not in any creditor's best interests, a sentiment shared by Mr. Moore. [P&A p.1:15-16]. By negotiating the Joint Plan, the Committee believes that it has achieved the most efficient, risk averse, sensible and likely means to provide for and maximize a return to creditors – through subordination of certain claims of insiders *with their consent*, through the replacement of management *with its consent*, through streamlining expenses, and through funding payments directly through proceeds from commercialization of patents, among other provisions set forth in the Plan.[2]

III. DISCUSSION

A. 11 U.S.C. § 1104(a)

6. In the Motion, Mr. Moore correctly notes that appointment of a trustee pursuant to 11 U.S.C. § 1104(a) [3] is an "extraordinary remedy" and that there exists the "strong presumption that

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[2] In accordance with the Term Sheet, new management has already been set in place. Mr. Venkidu has commenced his duties as has the TPL Board consisting of two Committee members. Furthermore, Mr. Leckrone has withdrawn from his seat on the Phoenix Digital Solutions ("PDS") management committee.

[3] As an initial matter, Mr. Moore has not established that he possesses standing to file the Motion (or to propose his Moore Plan) pursuant to 11 U.S.C. § 1104(a). Mr. Moore states that he is authorized to do so because he is a "party in interest" by virtue of his status as a creditor. [P&A p. 3:5-7]. Mr. Moore's statement is presumably based on his Proof of Claim No. 26 filed in the case (the "Moore Claim"). However, the Moore Claim explicitly states that it is a contingent claim based only on the potential "set aside" of the January 2013 Agreement and that absent such "set aside" and, in the alternative, the agreement is assumed, then "the contingency upon which this claim . . . rests will not occur and this contingent claim will not be pursued by Plaintiff Moore." [Moore Claim p.3:19-23]. The January 2013 Agreement has not been rejected by the Debtor and, in fact, will be assumed and assigned to the Reorganized Company pursuant to the Joint Plan. Therefore, Mr. Moore is not a creditor.

Notwithstanding the foregoing, the Committee is cognizant that the term "party in interest" is not limited to the examples set forth in 11 U.S.C. § 1109 and that the inquiry must be made on a case-by-case basis, into "whether the prospective party in interest has a sufficient stake in the proceeding so as to require representation" and if so, then it may be considered a party in interest. *In re Amatex Corp.*, 755 F.2d 1034, 1042-43 (3d Cir. 1985). Here, because Mr. Moore

1 the debtor should be permitted to remain in possession absent a showing of need for the appointment
2 of a trustee." [P&A p. 3:9-15, *quoting* A. Resnick & H. Sommer, 7 COLLIER ON BANKRUPTCY [16TH
3 ED.] Sec. 1104.02[3][b][i], at 1104-9 [Rel. 124-12/2012]]. He also acknowledges that he carries the
4 burden of proof that appointment of a trustee is warranted.

5 **B. The Motion Is Moot as Mr. Leckrone Has Already Been Replaced.**

6 7. Mr. Moore lists numerous alleged instances of inaction, failures, strategic flaws and
7 misdeeds of Mr. Leckrone, his "existing administration" and Alliacense which warrant the
8 appointment of a Chapter 11 trustee. [*E.g.*, P&A p. 4:1-21]. In fact, almost the entirety of the legal
9 argument in the Motion focuses on the factors delineated in *In re Sharon Steel Corporation*, 86 B.R.
10 455 (Bankr. W.D.Pa. 1988) and their application to Mr. Leckrone and Alliacense[4], to support the
11 argument that appointment of a trustee is in the best interests of creditors. [P&A pp. 7:1-10:5]. The
12 Committee has made similar arguments in the Committee Trustee Motion and the Derivative
13 Standing Motion. The Court has made clear that it could not rule on the Committee Trustee Motion
14 until the Committee produced additional evidence supporting the allegations. Obtaining admissible
15 evidence, which the Committee believes exists, would require significant discovery and trial at
16 considerable expense and delay, and is precisely why the Committee has focused on implementing
17 new management as is proposed in the Joint Plan.[5]

18 8. In light of the proposed Joint Plan, the Motion, therefore, is misguided and ignores
19 the realities of the present circumstances. Mr. Leckrone has already has been replaced by Mr.
20 Venkidu, which fact the Motion acknowledges albeit only in a cursory manner, yet the Motion
21 builds only a case why Mr. Leckrone should be replaced with a chapter 11 trustee. Mr. Moore

22

23 claims a stake to proportionate distributions of revenue realized from the MMP patent portfolio, he arguably could have a "sufficient stake" and be a party in interest.

24 While not conceding the foregoing, the Committee's opposition herein addresses the Motion assuming, *arguendo*, that Mr. Moore does in fact possess standing.

25 [4] In conjunction with negotiations of the Joint Plan and the Term Sheet, Alliacense's participation and role will
26 not only be monitored by new, independent TPL management, its role as license service provider will be supplemented by a second licensing services provider with respect the MMP Portfolio. Such services will now be allocated between
27 another entity and Alliacense. [*See* DISCLOSURE STATEMENT FOR JOINT PLAN OF REORGANIZATION (DATED SEPTEMBER 17, 2014) [D.E. 538] (the "Joint Disclosure Statement"), Sec. VI-A-1].

28 [5] As noted below, the Court stayed discovery with respect to the Committee Trustee Motion to await developments on the two competing plans then before the Court.

therefore, has not met his heavy evidentiary burden to warrant granting of the Motion at this stage.

9. As mentioned above, the Motion only addresses Mr. Venkidu's current management briefly, by questioning, without any basis, Mr. Venkidu's alleged lack of "interest in or experience with the MMP Portfolio" and raising an imagined conflict due to Mr. Venkidu's secured interest in "Non-MMP Portfolio revenues." [P&A p.7:11-16]. Not only are these presumptions unfounded, they are wrong. Mr. Venkidu is a creditor with a substantial claim in the case who would be paid from available cash in the estate, not merely from revenues generated from Non-MMP Portfolios. Therefore, it is indisputable that he is motivated to manage the company to succeed and that his interests are aligned with creditors. In addition, PDS, and not TPL, licenses the MMP Portfolio. [*See* Disclosure Statement Sec. VI-A-1]. Furthermore, to the extent Mr. Venkidu is incapable of or unsatisfactorily fulfilling his duties as CEO, the Joint Plan provides a mechanism for a party interest to request his termination and replacement. Therefore, concerns about Mr. Venkidu's motivations or credentials are unwarranted.

10. Somewhat ironically, the proposed Moore Plan mandates that the appointed chapter 11 trustee (assuming the Motion is approved) retain Mr. Moore's company to manage licensing of the MMP portfolio. As Mr. Moore is not a creditor in this case and directly benefits from MMP-generated revenue, it is his motives and potential conflicts of interest which must be questioned.

11. In sum, the Motion ultimately seeks removal of Mr. Leckrone and replacement by new management, both of which have already occurred and will remain under the Joint Plan until general unsecured creditors are paid in full. Indeed, the Motion even requests that the Court take judicial notice of the Committee Trustee Motion and all papers in support thereof, to support its argument that cause exists to remove Mr. Leckrone and former management.[6] The Court stayed the prosecution of the Chapter 11 Motion and discovery and urged the parties to either proceed with their competing plans of reorganization or reach agreement on a consensual plan. The Debtor and the Committee have engaged in long, sometimes painful negotiations with numerous ups and downs and have now presented to the Court the Joint Plan which envisions the same results desired by Mr.

[6] Notably, section 1104(a)(1) provides for appointment of a trustee "[f]or cause including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by ***current management***, either before or after the commencement of the case…" 11 U.S.C. § 1104(a)(1) (emphasis added).

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Moore, but with the exception that these results will be accomplished immediately on the Effective Date and without further litigation, allowing TPL to attend to its business and pay creditors. The Motion is therefore moot.

IV. CONCLUSION

12. For the foregoing reasons, the Committee respectfully requests that the Court deny the Motion.

Dated: September 18, 2014

DORSEY & WHITNEY LLP

By: */s/ Robert A. Franklin*
Robert A. Franklin
Attorneys for the Official Committee of Unsecured Creditors

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re:

TECHNOLOGY PROPERTIES LIMITED LLC, fka TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fka TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,

Debtor.

Case No. 13-51589-SLJ-11

Chapter 11

Date: October 2, 2014
Time: 3:00 p.m.
Place: United States Bankruptcy Court
280 S. First Street, Room 3099
San Jose, CA 95113
Judge: Honorable Stephen L. Johnson

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 305 Lytton Avenue, Palo Alto, California 94301.

On September 18, 2014, at my place of business, I served a true and correct copy of the following document(s):

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in the manner indicated below:

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☒ **By Mail** by enclosing said document(s) in an envelope and depositing the sealed envelope with the United States Postal Service with the postage fully prepaid, addressed as follows:

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This Certificate was executed on September 18, 2014 at Palo Alto, Santa Clara County, California. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Sandra Bloomer
SANDRA BLOOMER

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